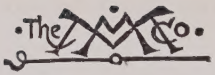
VOTING TRUSTS



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VOTING TRUSTS

A Chapter in Modern Corporate History

BY

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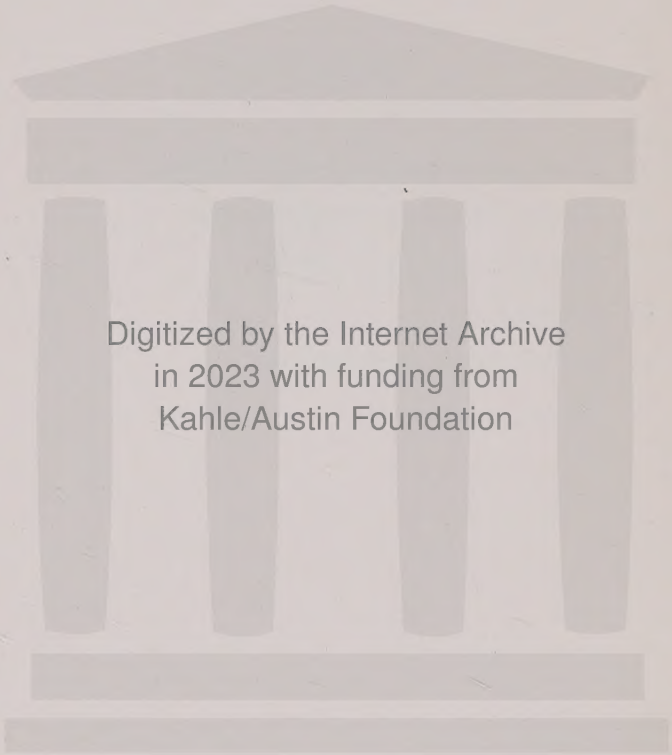

VOTING TRUSTS

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I

THE SIGNIFICANCE OF VOTING TRUSTS

The history of American corporations may be divided into an early period, in which corporate organization appeared chiefly in the development of banks and insurance companies, the later period of railroad expansion, and the modern period of the general application of corporate forms to mercantile enterprises. If a bank ceased to be solvent, holding only the usual assets of such concerns and with no plant or real estate investment to be gradually developed, the natural result was a prompt winding up of the business, without any attempt at reorganization. When, on the other hand, the rapid expansion of railroads under ill-considered financial policies led to or threatened disaster, there existed the road itself which could not be abandoned and the saving of which required the concerted action of either the former owners or new investors or of both. Likewise, with many of the large industrial corporations more recently established, financial embarrassment could not properly be met, by those interested, merely by writing off an investment, for the same reason that there usually existed a property or business of some intrinsic value which ought not to be sacrificed, and which might under proper conditions be

managed with some probability of ultimate success. Naturally thus the history of corporate development in the last fifty years has been marked by the introduction and refinement of the reorganization agreement or readjustment agreement. Usually as an incident or as a result of these, and after experience showing the ineffectiveness of pooling agreements and deposit agreements in meeting the needs of the case, there gradually was developed the voting trust agreement, the use of which has increased to a marked degree.

In its early form the typical voting trust agreement evidenced little more than the stockholders' transfer of their certificates absolutely to trustees, or in some instances to a trust company, and the undertaking on the part of the trustees to distribute to the holders of their trust certificates the amount of any dividends paid upon the stock, and on the termination of the trust to deliver stock certificates to such holders of trust certificates. The powers of the trustees were, for the time being, those of owners of the stock, and the absence of restrictions indicates the complete dependence then placed on the trustees, both to meet any unforeseen contingencies and to take all steps which might seem to them appropriate. The development from the occasional use of this simple arrangement has been marked, however, both by a great variety of detailed provisions and by the application of such trusts to the stocks of many concerns of substantial importance.

A discussion of voting trusts naturally suggests a justification of what some still regard as an innovation of

slight utility and of doubtful propriety. Such, however, is hardly more appropriate or necessary than a defense of corporate organization itself. Like every other detail or process in corporate affairs the voting trust may have been, although rarely, subject to such misuse as is inevitable when dependence is placed on the personal equation; but, on the other hand, while the object of some adverse comment, it has been much less harmful and much more productive of desirable results than most features of modern corporate development. It has not ordinarily been in itself a means of undue concentration, and not often has it been justly deemed even evidence of a purpose to bring about such a condition. Spoken of judicially as a "comparatively modern and useful device in corporate management," the voting trust has come to be recognized both by bankers and by investors as a desirable and effective adjunct of modern finance, the application of which to difficult situations has been amply justified.

The significance of the voting trust in the modern history of corporations, from both the legal and the economic standpoints, is sufficiently indicated by the fact that stocks of such railroad systems as the Erie, Southern, Reading, Baltimore and Ohio, Chesapeake and Ohio, Seaboard, Northern Pacific, Pere Marquette, Denver and Rio Grande and Frisco have earlier been thus controlled, and by the fact also that this form of holding has been applied in the affairs of many mercantile and industrial corporations, as also in the local traction systems in New York, Chicago and Philadelphia. No other

detail of corporate organization is so peculiarly the result of recent experience or more distinctive of the modern theory and practice in the correct and satisfactory reconstruction of corporate business.

This method of temporary control was not infrequent even in the decade of the seventies, as was natural at a time when scores of issues of railroad securities were in default. Thus, in 1875 the principal stockholders gave up control of the St. Louis, Iron Mountain and Southern by transferring a large block of stock to Baring Brothers and Co. in trust, with power to retain the same for voting purposes until six months after the full resumption of interest payments. The earlier suggestion to lodge this stock with a committee was superseded by Mr. Marquand's offer to make the assignment to the banking firm, as he did "not see how any committee could be named that would so fully represent the bondholders' interest, and in which all parties would feel such implicit confidence as in Messrs. Baring Brothers and Co." Three years later, the holders of eighty-five per cent. of the company's bonds having agreed to the funding of arrears of interest on certain conditions, the holders of more than eighty per cent. of the stock acceded to the arrangement, and under the agreement of November 27, 1878, transferred their stock to Robert Lenox Kennedy and four other trustees, who were to vote it until one year after the period, subsequent to March 1, 1880, when the company should have paid the full interest on both classes of its income bonds. In March, 1880, the trustees gave notice of the termination of the trust,

pursuant to one of its provisions, upon the request of the holders of the income bonds, the effect of which was, as stated at the time, "to put the shareholders again into full possession of the company, and enable them to do many things considered to be of advantage to the company, which the trustees, who were bound by the rigid terms of their trust, have not felt at liberty to do. In the general recovery of railroads from the prostration of 1873 there has been no company which has improved more rapidly than the Iron Mountain and none whose improvement has been more due to legitimate and solid considerations" (New York *Evening Post,* March 3, 1880).

In 1875 it was likewise proposed to transfer the stock control of the European and North American (now a part of the Maine Central) for a limited period to the holders of the concern's floating debt, although the actual operation of the road for four years thereafter was in the hands of Hannibal Hamlin and William B. Hayford, trustees under one of the company's mortgages.

As early as 1872 the common stock of the St. Louis, Kansas City and Northern had been placed in the hands of four trustees "for the purpose of enabling said trustees to enforce the provisions of a contract relating to the interchange of traffic, which has been entered into, by and between the Pennsylvania Company, the Chicago, Alton and St. Louis Company, the Kansas Pacific Railway Company, and this Company"; and still earlier, in 1864, a voting trust in the Pacific Mail Steamship Company, under which a substantial portion of the stock was

held by Brown Brothers and Co., had occasioned litigation in which the trust was sustained (*Brown* v. *Pacific Mail S. S. Co.*, 5 Blatch. 525, Fed. Cas. No. 2025; 1867).

In January, 1880, some four-fifths of the common stock of the Atlantic and Pacific was transferred to John A. Stewart and two associates as voting trustees in order to insure a continuance of joint control by the Atchison and the Frisco. As new issues were made, they were offered in equal shares to the stockholders of the two controlling companies, effecting a too close control, so that of the issue announced in January, 1882, one-third was released to bankers for the avowed object of making a foreign as well as a domestic market for the stock. The joint control was later extended so as to continue possibly until 1937, but in the meantime adverse conditions produced a rearrangement of the relations existing among the companies concerned.

This rather ancient trust long survived in literature (*Male* v. *Atchison, Topeka and Santa Fe Railway Co.*, 230 N. Y. 158; 129 N. E. 458; 1920. Riegel, *Story of the Western Railroads*, 173, 191), and its principle of dual control was recognized when, in 1925, all the common stock of the Denver and Rio Grande Western Railroad Company was placed under a voting trust, the trust certificates being equally divided between the Missouri Pacific Railroad Company and the Western Pacific Railroad Corporation.

The stock of the Pittsburg and Lake Erie Railroad was in October, 1877, placed under a trust perpetual in terms, which ten years later was overthrown by Cor-

nelius Vanderbilt (*Vanderbilt* v. *Bennett,* 2 Rlwy. & Corp. L. J. 409). The reorganization of the Mobile and Ohio in 1876, completed in 1879, provided that voting power on the stock should be vested in the Farmers' Loan and Trust Company, as trustee of the general mortgage, for the benefit of the debenture holders until the payment of the debentures, an arrangement which thirteen years later was unsuccessfully attacked (*Mobile and Ohio R. R. Co.* v. *Nicholas,* 98 Ala. 12 So. 723; 1893), and which now is on a substantially different basis, as the Southern Railway (pursuant to the policy indicated in its offer of January 31, 1901) has secured a large majority both of the general bonds and of the old trust certificates, issuing against the latter its own trust certificates bearing four per cent. in perpetuity. The voting trust of the Texas and Pacific Railway expired, and that of the Midland Railroad of New Jersey was created, in 1880; and in 1882, when the proposed Mutual Union Telegraph trust was the subject of discussion, there was also executed the Standard Oil Trust agreement, which was formally dissolved by the certificate holders in 1892. Thereafter, voting trusts increased in number and importance until, as often happens, their frequent use led to their application to situations in which no such arrangement was really necessary or justifiable.

The Erie, under its various corporate names, was perhaps the system most productive of voting trusts as of other unique features in corporate history. The plan of reconstruction of the Erie Railway, December 14,

1877, provided for placing with three trustees representing the bondholders, one-half of the stock of each class of the new company (the New York, Lake Erie and Western) until the full dividend of six per cent. should have been paid on the preferred stock for three consecutive years. Under this trust the English trustees yearly elected the company's board, and when the road's management was subjected to criticism in 1884, and when there was a "general discussion of the efficiency and satisfactoriness of voting trusts, which in some quarters are recommended as a panacea for the ills the English investors have experienced in the past," the English holders named as an investigating committee two of the three voting trustees, a coincidence which lessened the effect of the committee's comments. Some of the stock of the Atlantic and Great Western had been held in trust as early as 1868 (the year the road was leased to the Erie), and when this company was reorganized in 1880, as the New York, Pennsylvania and Ohio, all the stock was vested in five voting trustees, elected by certain classes of bondholders other than the "thirds," to be held until the third mortgage bonds (which were really fourths) should have received seven per cent. for three years. Under this plan also the voting trustees represented English investors. The management was not, and could not have been, successful; and "this old waterlogged piece of property, with its mountain of securities and unfortunate history and experiences," became a part of the Erie system in the reorganization of 1895, representing about $40,000,000, largely stock,

and about $20,000,000 undisturbed securities, in the reorganization, as against pre-existing issues of nearly $170,000,000, largely bonds. Of the Chicago and Atlantic stock ninety per cent. had been delivered to President Jewett of the Erie, as trustee, to be held until the payment of the company's first mortgage bonds and the repayment to the Erie of its advances for this western extension, a trust which led to litigation because of Jewett's futile attempt to retain control of the stock after ceasing to be president of the Erie, the court holding that the "facts abundantly show that" Jewett "was made trustee to hold the stock of the Chicago & Atlantic Company, with authority to vote it, because he was president of the Erie Company, and could be relied upon to control and manage the Chicago & Atlantic road as the western extension of the Erie line. If the Erie Company was expected to advance money to complete the construction of the new road, and to pay interest on the bonds, and thus take care of the credit of the Chicago & Atlantic Company, it was not unreasonable it should, in some way, be protected against unfriendly management of the new road" (*Farmers' Loan and Trust Co.* v. *Chicago and Atlantic Ry. Co.*, 27 Fed. 146; 1886). The same period witnessed the attempt of the Erie, following the pool of 1882, to control also the Cincinnati, Hamilton and Dayton through trust agreements, one of which (1882) was held to be void and the other (1886) held to be voidable (*Hafer* v. *New York, Lake Erie and Western Ry. Co.*, 14 Weekly Law Bull. 68; *Griffith* v. *Jewett*, 15 Weekly Law Bull. 419). The stock of the

modern Erie, as reorganized under the plan of 1895, was again controlled by voting trustees, J. Pierpont Morgan, Louis Fitzgerald and Sir Charles Tennant, and when this historic trust was about to terminate in 1904, upon the payment of the required dividend, "holders of important interests in the property" strongly urged the trustees to arrange for an extension of the trust for five years, in order that "important developments of the property" might be completed and "any untoward movement" prevented. A majority of the certificate holders declined, however, to concur in an extension and the system was finally in the direct control of the stockholders, subject only to the voting rights held by two classes of bondholders.

One of the most important, and most discussed, voting trusts was that of the Southern Railway, created under the agreement of October 15, 1894, extended by the agreement of August 27, 1902, and finally terminated as of July 31, 1914, by the surviving voting trustees, Charles Lanier and George F. Baker.

A most noteworthy application of the voting trust arose not as an incident of a reorganization in behalf of creditors but as a result of the pressure of the federal government in enforcing a "dissolution" of the New Haven system. In accordance with the decree, of October 17, 1914, of the United States District Court for the Southern District of New York, three sets of voting trustees were created, each consisting of five members, who also were made "officers of this court for the purpose of carrying this decree into effect." To ex-judge

Walter C. Noyes and associates was transferred the entire capital stock of the Connecticut Company, then owned by the New England Navigation Company; to Rathbone Gardner and associates were transferred all the capital stock of the Rhode Island Company, owned by the New Haven itself, and certain shares and bonds, owned by the New England Navigation Company, of the Providence and Danielson Railway Company and of the Sea View Railroad Company; and ex-judge Marcus P. Knowlton and associates took title both to certain shares, then owned by the New Haven, of sixteen companies leased to the Boston and Maine Railroad Company, and also to the entire common stock and all but about 28,000 shares of the preferred stock of the Boston Railroad Holding Company, which in turn owned the controlling stock interest in the Boston and Maine Railroad Company. The trustees in each instance had all the rights of owners, for varying terms which might extend over a period of about five years, subject only to certain directions as to the ultimate sale of the securities held by them, and subject also to detailed provisions of the decree and further orders of the court. They were furthermore authorized to issue, with respect to the property held by them, negotiable certificates of beneficial interest therein. In no other instance has there been an establishment, in a single transaction, of voting trusts of such significance, while their creation in this case by the order of a federal court may properly tend to neutralize any criticism of the procedure in judicial opinions.

The time within which these stocks might be sold was successively extended by the court. As to that held by the first group of trustees the time of sale was extended to 1926, but late in 1925 the New Haven was permitted to resume the operation of its trolleys, including those of the Connecticut Company. The stock held by the second group of trustees was ordered sold in 1920, but under restrictions to prevent its passing into the control of the New Haven Company. The third trust was dissolved, and the securities ordered returned to the New Haven Company, in 1923. At about the time of this last step a protective association of Boston and Maine stockholders became active in opposition to the New Haven influence, and the preferred stockholders formed a five-year voting trust. This, however, was dissolved in 1925, when the Boston Railroad Holding Company, acting for the New Haven, assented to the plan for the financial readjustment of the Boston and Maine.

The adoption of a voting trust has usually been incident to the rehabilitation of a corporation without foreclosure or to its reorganization through foreclosure, and the device has served as a form of prudent control either of the existing stock or of the newly issued stock of the successor corporation. Even in the earlier period, when stocks were issued in amounts and under circumstances not later recognized as correct, the supposed equity of the stock was at times recognized if only by deferring its extinction, which in some cases was more than it was entitled to; and although a corporation might be practically bankrupt, yet its corporate life was extended and

its stock issues left undisturbed, the actual control of the stock being subjected to a voting trust and practically turned over to representatives of the bondholders who either refrained from foreclosing or advanced new funds or did both. Thus the receivership of the Chesapeake and Ohio Railway was terminated (September 29, 1888) without a foreclosure sale, the holders of about 99½ per cent. of the bonds and 99 per cent. of the stock concurring in the reorganization plan of February 7, 1888, under which the first preferred and common stock were turned over to three voting trustees, J. Pierpont Morgan, John Crosby Brown and George Bliss.

A corporation with assets of a value in excess of its bonded indebtedness, and with apparently some equity in its stock, might yet be unable to maintain its interest payments and avoid a receivership. The strict process would then be a foreclosure of the mortgage in default and a sale under conditions in which rarely could more than the amount of the mortgage indebtedness be realized, with the result that the title of the original corporation would be divested and its stock made worthless. The bondholders, or the committee representing them, are usually in a position to compel a foreclosure sale, and, if it is held, to control it in the interest of the bondholders alone and thus to eliminate the stockholders. This process, with its technically correct but unfortunate result, has ordinarily been avoided by the intervention of a purchasing committee or reorganization committee or of so-called reorganization managers. These have directed their attention to devising a reorganization plan

which would effect an equitable result among all parties in interest, also saving in part the precarious investment of the stockholders by allotting to them stock in the new corporation on fair conditions. While able to dictate the terms of a reorganization, they have often admitted the old stockholders to participation in a reorganization on equitable terms, such as the payment of an assessment, properly requiring also that the control of the new stock should be so placed as to prevent a disturbance in the value either of the securities or of the stock itself. In fact, such certainty of careful management of the stock is often an essential element in securing the acceptance of a reorganization plan by those whose concurrence is indispensable to its success. The stockholder who wished to stand on his legal rights might of course do so, and omit to pay the assessment, and retain his valueless stock, as many have done. The only material effect on the reorganization of such election would be to decrease the amount of cash controlled by the reorganization committee and increase the amount of unallotted new stock or voting trust certificates which the committee might sell to the public, if necessary, or turn over to the new company.

While in its early form, as already suggested, the voting trust was simple and the power and discretion vested in the trustees closely analogous to those of legal owners, nevertheless by degrees limitations were imposed on the freedom of action of the trustees. Thus, it was provided that they might not consent to mortgaging the concern's property or concur in a change of its capitalization with-

out securing the approval of holders of a stated proportion of outstanding trust certificates. Likewise the certificate holders were at times given a voice in deciding upon the dissolution of the trust, and in exceptional instances they have been given power to instruct the trustees, as with respect to the choice of directors and in other particulars. The increasing complexity of the financial structure of corporations is reflected in a corresponding increase in the details, and in the variety of such details, in voting trust agreements. The natural result has been, by provision for meetings and by subjecting certain actions of the trustees to the consent of their certificate holders, to grant to the certificate holders more and broader rights than they earlier possessed. In general, however, the practical tendency has been to confine the functions of the voting trustees to the choice of a board of directors, the receipt of dividends and the distribution of amounts so received, and the discretionary power of terminating the trust. These functions, to be sure, comprise the normal purposes of the ordinary voting trust, and it is through the proper exercise of the first power stated that the real object of the trust is secured, that is, the maintenance of such a board of directors as will provide for the corporation an administration tending to establish and develop a consistent and continuous policy in its affairs.

Ordinarily, the object aimed at in a voting trust has been the protection of the bondholders, not indeed by actually improving in any technical manner the status of their securities, but chiefly by procuring for them

such practical advantage as may arise from a well considered conduct of a corporation's affairs. This attempt to strengthen the credit of a corporation, by withdrawing the actual control from those holding only stock, is natural in view of the fact that in most reorganizations the stock of the new company represents a much smaller proportion of cash investment than do the outstanding bonds. Moreover, the new bonds, representing to a greater extent an actual cash investment, could not be sold, and could not be successfully offered in a plan of reorganization, unless their value should be maintained not only by the usual legal safeguards but also by some assurance, in a binding form, of correct management.

This general object of a voting trust has been repeatedly recognized, and in a variety of terms. Thus, it has been stated as being an assurance of the "conservative management of the property" (Chicago Railways); and "to assure continuity of efficient and proper management" (International Fire Engine); and because it was considered "of importance that the policy of the present management should be continued" (International Mercantile Marine); and for "the express purpose of continuing the policy of the company as an independent organization" (Lehigh Coal and Navigation); and "to better secure an administration of the system independent of the control of all other interests, and for the better security of the holders of the bonds and stocks of the reorganized or new company" (Kansas City Southern); and as being "in furtherance of the independent reorganization

and administration of the property, and to promote and protect the value of the securities of the new company" (Northern Pacific); and "for the protection of the creditor class assenting hereto" (Philadelphia and Reading); and, often, "as additional protection to the new mortgage bonds" (St. Louis and San Francisco); and, as more fully stated in the Allis-Chalmers trust agreement, in order "to secure for the common benefit of the holders of the preferred and common capital stock of the Company impartial, stable and satisfactory management of the business policy and property of the Company and protection of the value of the enterprise during the period of five years." The purpose was well stated in the reorganization plan (May 25, 1903) of the United States Shipbuilding Company (although the voting trust was omitted from the amended plan of January 30, 1904) as follows: "To assure continuity in the management of the new corporation for a sufficient number of years during which the improvements and developments of all the properties of the United States Shipbuilding Company and the Bethlehem Steel Company are to be undertaken and completed, and to assure such management support and stability, a voting trust of the entire capital stock of the new corporation will be created to be in force for a period of seven years."

Such general statements merely illustrate the avowed object of the voting trust as usually expressed in reorganization agreements. Similar statements are usually included in voting trust agreements, at times by way of literary effect and at other times to strengthen the ele-

ment of legal consideration underlying the agreement. A combination of both appeared in one voting trust (Armour and Co., common, 1922), in which the only preamble was the statement that "it is deemed to be for the best interests of the corporation and its stockholders that this agreement be made." This perhaps sounded too cryptic, and near the close of the agreement was inserted the following: "This agreement is entered into for the benefit and protection of the holders of all of the securities of the corporation and its subsidiary companies and in order to carry out and effectuate the purposes and intents of a plan providing for the pending refinancing of the corporation."

The specific purpose and justification are still more clearly shown by the detailed provisions of the voting trust agreement itself tending to secure the object desired. Whether the new policy or the new management has been sufficiently tested and approved, and whether the stock may be safely released so as to permit a possible change of control, depends entirely upon the condition of the corporation's business. Whether this is at last soundly established is determined in a variety of ways, as shown by the different provisions for the dissolution of the voting trust on the happening of a stated event. Thus, it has been provided that the voting trust should, at the latest, be terminated whenever (often after a five-year period or other term) the general mortgage bonds had received four per cent. for two years (Central New England); when the first preferred stock had received four per cent. for three years (Colorado and Southern), or for

two years (St. Louis and San Francisco); when the preferred stock had received four per cent. for two years (Mexican National) or five per cent. for three years (Northwestern Elevated); or, for an extreme case, when both classes of stock had received five per cent. for five consecutive years (Omaha Water). Whatever the test in a particular case, it has been such that if it should be met it might properly be assumed that the theoretical security of the bondholders had been shown to be actual, and that therefore the need for a close control of the stock had passed. A practical test was early suggested in *Cowell* v. *City Water Supply Co.* (130 Iowa 671, 105 N. W. 1016; 1906) as follows: "As to pooling of stock, it is sufficient to say that the plan of reorganization to which the appellant consented by his silence gives the right of control until such time as the property gets thoroughly upon its feet."

In the case, however, of a corporation with no bonds outstanding and no excess of liabilities over assets, the adoption of a voting trust may not be regarded as for the purpose of affording protection to security holders or other creditors, but rather for the simpler purpose of insuring, for the benefit of the assenting stockholders themselves, a control of the corporation which should guarantee for a reasonable period a satisfactory policy and a management of well-understood character. Where the stockholders are thus in a position to control a readjustment free from any dictation by creditors, the creation of a voting trust may be unnecessary and may appear to be undesirable. In few important instances has a

voting trust been created under such circumstances, and then only for what were at the time apparently controlling or commendable reasons. As a detail of a voluntary arrangement by the stockholders themselves, in the conspicuous instance of the International Harvester a voting trust was formed, although naturally not prompted by any requirement of creditors. The new company represented a combination of earlier distinct concerns, and the adoption of a voting trust, with the bankers represented, would have seemed justifiable simply in order to avoid the possibility of any change of policy due to natural differences of opinion among groups newly brought together, as well as in order to prevent the control under any contingency passing from those who had been instrumental in developing and reorganizing the industry. Likewise in the case of Merck and Co., Inc., a similar combination of two quite historic concerns, all the stock was placed under a voting trust for ten years, or until the earlier retirement of the concern's bonds, there being three trustees, one representing each of the two merging concerns and the third presumably a neutral. Thus, also, by arrangement among all the stockholders, in the case of the Bankers Trust Company, the entire stock was subjected to a voting trust and not as a detail of reorganization. Especially in such instances, in which the holders of the entire stock agree to place their holdings in a valid trust, there seems to be no ground for proper objection on the part of anyone, as the arrangement is one of free contract among the parties in interest. Even so early a critic of voting trusts as Governor Baldwin apparently would approve such a trust when based on

the unanimous consent of all stockholders (1 *Yale Law Journal,* 11).

If the majority only of the stockholders, as in the case of the Guaranty Trust Company, desire to create a valid trust for no illegal purpose there also can be offered no proper objection, although remonstrances of minority stockholders, and others, are not infrequently expressed. As a matter of fact, the interest of a small stockholder is ordinarily not jeopardized by such an arrangement, while it frequently is benefited. Objections by minority holders are usually based upon grounds of policy or of personnel. If on the former, the practical answer is that the choice of a prudent policy is as vital to the holders of trust certificates as to minority stockholders, and that voting trustees have seldom acted in a manner inconsistent with their trust, and usually indeed have had no incentive to do so. So far as objection has been raised on grounds of personnel, the objection itself states the case. The advantage herein of the voting trust is that for a fixed period the course of the concern is not guided by decisions on personalities. Such questions, or ambitions, are not infrequently at the beginning of contests for control among groups of stockholders; and seldom from these contests does any benefit arise to the concern itself. These of course tend also to make a board's tenure uncertain and the endurance of any particular policy indefinite, and it is in the avoidance of these features that the voting trust has merited approval.

It is rare that a voting trust is so formed as to tend to insure a perpetual or even an unduly prolonged con-

trol by the voting trustees. Indeed, it is noteworthy that in few instances does it appear that such a trust has been created primarily for the purpose of maintaining control in the hands of those who might not otherwise be able, or entitled, to exercise it. On the contrary, in practically all instances of importance it is obvious that the design has been to secure and maintain control not for its sake alone, but to insure conservative conduct of the corporation's affairs for the benefit both of the security holders and of the stockholders themselves. Occasionally apparent exceptions even to such a statement will be found, as when at one time the voting trustees of the Central New England Railway held only slightly more than 50 11/13 per cent. of the total outstanding stock, or as when the voting trustee of the United Cigar Manufacturers Company held merely 51 per cent. of the common stock, or indeed as in the case of the Pure Oil Company. When this trust, of 1895, expired in 1915 the trustees held 453,670 shares out of 907,049, or an infinitesimal fraction above 50 per cent.

In the great majority of early instances the voting trust was for the period of five years, a limit apparently adopted in recognition of the New York statute, as it was before the term was changed to ten years in 1923, and elsewhere used in imitation of what there had become practically a universal term, due to regarding as restrictive what may possibly be deemed a permissive phrase in the law. Some, however, have been for seven years (Denver Railway Securities), eight years (Deere & Co.),

ten years (National Asphalt, Quaker Oats, Booth Fisheries, Pan American Eastern Petroleum), twelve years (Consolidated Railroads of Cuba), fifteen years (First National Bank of Tarboro), and twenty years (Moline Plow, Goodyear Tire and Rubber). The provisions of the Chicago Railways participation agreement indicate that the voting power of the depositaries may endure at least for a twenty-year period, while that of the Atlantic and Pacific was originally for thirty years, and that discussed in *Warren* v. *Pim* (66 N. J. Eq. 353, 59 Atl. 773; 1904) was for fifty years. The voting trust in connection with the Chicago City and Connecting Railways Collateral Trust was drawn in such terms that it might continue during the lives of eight designated persons and for twenty years after the decease of the survivor (*Venner* v. *Chicago City Railway Co.*, 258 Ill. 523, 101 N. E. 949; 1913). Such trusts for more than five years were in fact earlier exceptional, and one for the life of the corporation itself (Consumers Gas Trust) was indeed an anomaly. The trusts in the Brooklyn-Manhattan Transit Corporation and the Interborough Rapid Transit Company may endure for thirty years, while that in the Houston Oil Company of Texas may not terminate until fifteen years after the death of the last survivor of seven managers named in the readjustment agreement. The declaration of trust in the Western Massachusetts Companies, commonly referred to as a voting trust although not such, may extend for seventy-five years or until twenty years after the death of the last survivor of sixteen designated individuals,

whichever may happen first. Very few have been, either in terms or as judicially interpreted, practically perpetual (Omaha Water), while one perhaps most indefinite in duration, and apparently incapable of termination by action on the part of the parties most interested, was in fact created by statute (New York, Ontario and Western).

The use of a voting trust has been criticised as readily tending to undue concentration of power, and while this criticism is in a measure correct, it is significant that in no important instance has power so acquired been abused. Indeed, responsibility has been more specifically located, and a small body of trustees has naturally been more solicitous of acting correctly than is always the case with a temporary proxy committee or with a large board whose size alone tends to minimize the feature of personal responsibility. Moreover, the use of the voting trust has unquestionably produced fixity of well-considered policies, the maintenance of harmonious administration for a period sufficient to test such policies, and at the same time has secured the more consistent personal attention of advisers commanding the confidence of those whose capital was involved. Rarely, if ever, has a justified attack been made on the conduct of a well chosen group of voting trustees. To be sure, the voting trust of the St. Louis, Arkansas and Texas was later said to have been "established as a supposed protection for bondholders," and some of the early voting trusts in the interest of foreign investors received unfavorable comment due rather to conditions incident

to absentee ownership than to the effect of the voting trusts. Occasionally, a voting trust has been used under such circumstances as to arouse criticism or misunderstanding, as in the cases of the Bankers Life Insurance Company (*Knickerbocker Investment Co.* v. *Voorhees,* 100 App. Div., N. Y., 414; 1905) and of the Parkes Manufacturing Company (*Sullivan* v. *Parkes,* 69 App. Div., N. Y., 221; 1902); and rarely a protective committee has even had authority from its depositors to institute an action for the dissolution of a voting trust, as in the case of the Seaboard Air Line (1904). In the case of the Anthony and Scovill Company (*Brock* v. *Poor,* 216 N. Y. 387, 111 N. E. 229; 1915) a holder of a trivial amount of stock, perhaps thinking its "nuisance value" could be capitalized, started litigation that went even to the Court of Appeals without any result beneficial to the complainant or others. The litigation over the Bank of America voting trust (see page 163) involved no complaint of mismanagement on the part of the voting trustees, and indeed in very few of the cases discussed later does this element appear. The controversy over the affairs of the Goodyear Tire and Rubber Company was complicated by other features than the existence of the voting trusts.

Some writers, especially before voting trusts had been examined with care, condemned them rather more freely than the facts and the law warranted. Thus it has been said (1902): "The collective counsel and wisdom of all whose interests are bound up in the corporation is supplanted by an alien and selfish voice in all measures

which have to do with its success. The courts do not regard voting trusts with favor" (36 *Amer. Law Rev.* 222). Litigation has naturally produced many opinions illustrating both views on the general question, one of the most searching analyses being that of Justice Mahlon Pitney in *Warren* v. *Pim* (66 N. J. Eq. 353, 59 Atl. 773; 1904). The most noteworthy criticism of voting trusts, and one important chiefly because of its character as a congressional document, was that contained in the report to the House of Representatives of the so-called Pujo Committee (1913), which alluded in graphic terms to the "defenseless security holders" and to the absence of "any protection offered to the security holders against oppression or injustice" in the course of reorganizations resulting in voting trusts. Mention was significantly made of several voting trusts, with all of which a single banking firm was in some degree identified. No mention was made of other important voting trusts, and no evidence was introduced before the committee to demonstrate adequately whether voting trusts have in general been a constructive benefit or an evil. And yet it has been said of them: "They have very generally been oppressively imposed by large interests upon a prostrate defenseless property in course of reorganization where the interests were scattered, unable to protect themselves and virtually forced to surrender their voting power upon the demand of the reorganizers" (Samuel Untermyer, *A Legislative Program,* 1914, p. 25). The activity of the Pujo Committee was by some credited with influencing the dissolution of the voting trusts of

the stocks of the Bankers Trust Company and Guaranty Trust Company, and it was later stated (before the Owen Committee of the United States Senate, 1914), that these trusts were "dissolved and disbanded as a direct result of the exposure of their existence" (*Testimony*, p. 77). But even this result was probably of no real advantage whatever to the companies concerned or to their stockholders, and indeed of no great significance, except as it served as an illustration of the importance of "public opinion" as represented by a congressional committee exhibiting, as to this subject, more vigor than thoroughness and more power of expression than of analysis.

The aftermath of this inquiry was summarized (1918) by a careful writer as follows: "This agitation was not without its effect upon the courts, and the decisions reflect its effect and consequence. At least two courts have adopted a point of view, as a result, which is unprogressive and reactionary, although it may reflect the popular whim and caprice of the passing moment." (18 *Columbia Law Review* 123.) The writer there discussed two decisions, that of the Supreme Court of Illinois in *Luthy* v. *Ream* (270 Ill. 170, 110 N. E. 373; 1915) and that of the Public Service Commission of Missouri (1916) upon the Frisco reorganization plan. After discussing these the writer continues: "It thus appears that the agitation and crusade of the years 1912-13 were not without their effect upon the courts." Perhaps the effect has been exaggerated. In *Luthy* v. *Ream* the court did not seem to apprehend that much had hap-

pened since the *Shepaug* case (1890), and obviously erred in treating a voting trust agreement as substantially identical with a revocable proxy.

In the Frisco case the Commission refused to approve the voting trust feature of the reorganization plan, largely on the ground of supposed repugnance to the provisions of the constitution of the state requiring the election of corporate directors by the stockholders. The Commission referred to *Barrie* v. *United Railways Co.* (138 Mo. App. 557, 119 S. W. 1020; 1909) as being "the only pronouncement of an appellate court of this state upon that question," and while recognizing it to be dictum spoke of the case as "persuasive authority" and said that "the court strongly disapproved such a scheme of corporate control." What the court said, among other things, was: "We do not mean to be understood here as recognizing this voting trust as a lawful arrangement under the laws of this state. Nor are we here deciding that it is invalid."

The article cited does not mention the next step. The matter came before the Commission for a third time, in June, 1916, (4 Mo. P. S. C. 95). Their reference to the possibility that the incorporation might be effected in another state discloses solicitude for the revenues of Missouri. They were assured that litigation would be commenced to test the validity of the voting trust, and finally authorized the reorganization with the voting trust included, "leaving the validity of the voting trust for adjudication in the courts." Later in same month two applications for a rehearing were denied, and as appar-

ently the reorganization was to be put into effect as of July 1st, and as also it would seem useless merely to provide for litigation, the voting trust was abandoned, but in its place was used a "stock trust agreement" (July 1, 1916), having a marked resemblance to a voting trust agreement and apparently accomplishing as satisfactorily the desired result. The reorganization managers under the plan of November 1, 1915, entered into an appropriate agreement with seven individual trustees, and further executed an indenture of trust (the two agreements incorporating each other by reference) with an individual and the corporation which was the corporate trustee under the company's prior lien mortgage. These latter parties were termed the "stock trustees" and the stock was placed in their names in order "further to secure" the prior lien bonds. The stock trustees agreed, with details not material here, to vote the stock as directed by two thirds of the seven trustees under the "stock trust agreement" and the latter trustees issued their "stock trust certificates" which were dealt in on the market until the agreement, under one of its limitations, terminated on July 1, 1921, when actual Frisco stock came into the hands of the public. Later in the same year, 1916, the Commission made the same gesture in the case of the Missouri Pacific reorganization (4 Mo. P. S. C. 461).

The fiction of the great effect of the activity of the Pujo Committee has persisted. Even as recently as 1925 the Superintendent of Banks of New York (in a memorandum read before the state Senate) said: "Voting trusts are not new. They were considered detrimental to

the best interests of banking institutions and were therefore abandoned." The two banking institutions to which he apparently refers seem to have been quite prosperous in spite of such detriments. And indeed of them the Pujo Committee said: "It may be assumed that in the two conspicuous cases that were brought to our attention the prosperity of the companies has been vastly promoted by that action, as we have no doubt it has been." (*Report,* page 142). And at the time the Superintendent of Banks submitted his memorandum, it was later claimed, voting trusts of bank stocks existed in twelve states, including at least eight banks in New York City.

This summary of certain literature on the subject would not be complete without stating that Mr. Untermyer, in the preface of his pamphlet "Who is entitled to the credit for the Federal Reserve Act?" (June, 1927) refers with natural enthusiasm to "the revelations by the Pujo Committee of the stranglehold of the great banks and financiers (which had stirred the nation to its very depths, as had no other disclosures in a generation) * * *."

As indicating the type of men usually chosen to serve as voting trustees, as well as the reason for such trusts, the following, from an anonymous correspondent, is significant: "Any one who looks carefully into the original formation of the Chesapeake & Ohio, Northern Pacific, the Reading, and the Erie Railway voting trusts, which have expired, and of the Southern and the Chicago Great Western voting trusts, which are still in existence (the six just named being the chief examples in this country), will learn that, in every instance prior to the reorganiza-

tion of the property, the bankruptcy of the road had been due to faulty management, and that it was impossible, in working out the reorganization, to secure the co-operation of the bondholders and of the stockholders (who, in the latter instance, were frequently compelled to pay heavy assessments), unless some warranty were given to these security holders that their re-created 'child' should be looked after by men of character until it outgrew its swaddling clothes. The only way to attain such a warranty was to persuade men of ability and character to give their names to the enterprise as voting trustees of the stock for the initial period of years" (New York *Evening Post,* December 21, 1912).

The motive in the proposal of a voting trust is illustrated by the circular of Kidder, Peabody and Co. (1889), as to the Atchison: "During the progress of the reorganization it has been frequently suggested in the public press and by numerous and large holders of the company's securities that it would give greater stability to the reorganized company if a management committed to the successful working out of the plan of reorganization, and absolutely in the interest of the property, could be secured for several years.

"Consulting our own inclination and convenience, we would prefer to leave the management of this great property to others; but we recognize the force of the suggestion and the necessity of some other arrangement, and, as many shareholders believe that great advantages are likely to result to the holders of all classes of the company's securities from such co-operation, we have con-

sented to act in the matter." The suggestion was commented upon at the time in the following terms: "Having reached this stage, it is natural to seek a continuance and further development of the good results already attained. In fact a perpetuation of the existing policy, and the keeping of control in present hands, appears to those directing Atchison affairs the one thing necessary to round up and complete the work of reorganization and renovation in a practical and satisfactory manner. Hence Messrs. Kidder, Peabody & Co. propose the establishment of a voting trust. The point which it is sought to guard against is of course the danger of having the property pass into the control of rival systems, or into the hands of unscrupulous and designing men, who would reverse the new policy and manage the property for speculative purposes" (*Com. & Fin. Chron.*, December 21, 1889).

This danger was well expressed by the voting trustees of the Southern Railway (August 27, 1902), who said that if the trusteed stock were to be released and dealt in on the market it would be "possible for the control of the Company to be bought and sold from day to day and" render "its policy and management subject to sudden and surprising change." And so, in the case of the Pittsburgh Coal Company, a voting trust was proposed in order to "prevent the control of the property passing to new interests to the detriment of the value of the shares, . . ."

The general purpose is also illustrated by the following statement as to the five-year voting trust of the New York and New England Railroad Company: "The repeated changes of management to which it has been subjected

during the past twelve years has naturally had a bad effect upon its credit and its business. Railroad men have been averse to entering its directory and to taking a hand in the direction of its affairs, just because of the uncertainty as to their retention for a sufficient length of time to demonstrate what the road could do" (Boston *Traveler*, June 13, 1892).

In addition to such pertinent arguments in favor of the advisability of voting trusts, there should be borne in mind one practical consideration. The reviving of a helpless concern is usually, and naturally, entrusted to a banking firm or a group of bankers. They or their friends are expected in the end to market the securities of the reorganized company and they are entitled to take all proper steps both for protecting their customers and for insuring correct management of a company of which they are regarded as financial sponsors. As a director of a much reorganized concern, after one of its experiences, said concisely: "Naturally the people who put up the new money required voting trustees for the present time." Through fees as reorganization managers and commissions as syndicate managers their own remuneration, or profit, is usually secured shortly after the reorganization is consummated, and their interest might well then cease if they had no regard for the effect on their reputation of the result of their work. Their possible profit in controlling future underwritings is negligible as compared with the effect on their business of having incompletely managed a futile reorganization.

The use of a voting trust as an assurance of "banking

control," or investment control, may often be expected and also approved. Where control was bought by three new interests it was quite natural that the stock be tied up for five years (Automatic Straight Air Brake Company). As an incident of a reorganization it was doubtless justifiable that all the common stock was turned over to voting trustees representative of the creditors (Hanover Lunch and Restaurant Co., Inc.). When a substantial part of the common stock of Sulzberger and Sons Company (1915; later Wilson and Company, Inc.) was bought by banking interests, all the common was placed in a voting trust, a majority, and later four, of the five voting trustees being bankers; and yet this trust terminated on the original date of limitation, in 1920. A case that might on the surface, but doubtless only so, be criticised is that of the U. S. Food Products Corporation, of which all stock of both classes was placed in a six year voting trust with three trustees, all bankers. The history of the predecessor corporation was such as amply to justify some such control. The fact is that in not infrequent instances "banking control" is imposed not so much with the design of putting the banks in as of getting them out. And indeed it has been said: "Voting trusts in favor of creditors advancing money to a corporation are too common to be considered for one moment illegal *per se*" (*Almirall and Co.* v. *McClement*, 207 App. Div., 320, 202 N. Y. Supp., 139; 1923).

Notwithstanding the apparent reasons for approving the establishment of such a trust in many instances, there has been considerable condemnation of the device.

Thus the doctrine has been frequently advanced that each stockholder is entitled to the judgment of his fellow stockholders. As the functions of the stockholders are ordinarily restricted to the choice of directors, this doctrine would rest on the proposition that at elections each stockholder should express his individual choice in the manner most advantageous to the corporation. While not altogether overthrown by the recognition of the fact that the majority may vote practically as they wish and may indeed control the corporation (*Barnes* v. *Brown,* 80 N. Y. 527; 1880), and that the majority may act unwisely (*Matter of Argus Co.,* 138 N. Y. 557, 34 N. E. 388; 1893), the doctrine has nevertheless been now converted into a fiction by the mere development of corporations. It has become inapplicable, if for no other reason, by the increase in size of corporations. In a corporation with ten thousand stockholders, and even in one with a few hundred, it is impossible to apply a town meeting system to the selection of a group of individuals, especially where the selection has to depend on elements of personality which ordinarily cannot be helpfully debated in mass meeting. That the real exercise of individual judgment by the stockholders at large is not only a thing of the past, but indeed an impossibility, is demonstrated by the facts that on July 1, 1927, the stock of the Pennsylvania Railroad Company was held by 141,558 persons and that, also on the same date, there were 422,671 stockholders in the American Telephone and Telegraph Company. Thus the theory that "each stockholder is entitled to the presence of his associates to the end that

they shall reason and be reasoned with," necessarily becomes entirely inapplicable. This line of suggestion has been waived aside as "the argument *ab inconvenienti,*" and as presenting "a question rather for the legislature than for the courts" (*Warren* v. *Pim,* 66 N. J. Eq. 353, 399, 59 Atl. 773; 1904). It must be admitted, however, that the inconvenience is real and that its effects cannot be ignored even by the courts. As an authority has written: "Theoretically the stockholders elect the directors, but that theory has broken down as applied to railroads and other great corporations. The stockholders still have the power, but do not and cannot exercise it. They are multitudinous, widely scattered, many of them women and estates" (W. W. Cook, New York *Sun,* April 12, 1914). Such conditions render of doubtful weight a judicial statement that stock should be voted "according to the judgment of each individual stockholder for the benefit of the entire corporation" (*Harvey* v. *Linville Improvement Co.,* 118 N. C. 693, 699, 24 S. E. 489; 1896), and a decision, even in a case where proxies were not authorized, which speaks of "the obligation of all the members to assemble together" at a corporate election (*Commonwealth* v. *Bringhurst,* 103 Pa. 134; 1883). Nevertheless, the ideal conception of the stockholder's rights has not wholly disappeared, and has more recently been expressed, with a slight modification, as follows: "The real stockholder, at the stockholders' meeting, has a right to have the other real stockholders present in person or by proxy for the purpose of considering the well-being of the company" (*Bache* v. *Central Leather*

Co., 78 N. J. Eq. 484, 81 Atl. 571; 1911). Indeed this doctrine, with a very dubious addition, was reaffirmed in *Thompson* v. *Blaisdell,* (93 N. J. L., 31, 107 Atl., 405, 1919), where the court spoke apparently with approval of "the policy that entitled every stockholder to the benefit of the vote of every other stockholder and intrusts the voting power to the beneficial owner."

The recognition of such conditions has led to the development of the "proxy committee" as an agency by which the group administering a corporation secure two necessary results: the actual representation of a quorum at a stockholders' meeting, and the election of a board in harmony with the existing policy of the corporation and presumably composed of the men best qualified to carry on that policy. The "proxy committee" is commonly organized each year, especially where this deference is due to statutory limitations as to the duration of proxies, and usually its selection is frankly at the instance of the existing board of directors. As such proxies often run in favor of three nominees, or a majority of them, or in some instances any one of them, the actual power is for the time being as closely held as ever by voting trustees, while the control of the stockholders' meeting is fully as effective. In some companies the practice is to ask the stockholder to give his proxy, with power of substitution, to any one or several of the directors, all the directors then possibly substituting the same person actually to exercise the vote. Except in the very infrequent cases of a real contest, the voting thus is merely a formal routine under the direction of those in office. As a matter of fact the

minority stockholder is seldom in such instances any more efficiently or independently represented than when his original stock is voted by voting trustees.

One criticism of the voting trust has arisen really from the circumstance that the existence of the trust may be unknown to the public, especially if the trust certificates are not listed on a stock exchange, and that there may thus be some implied misrepresentation to the public in holding out as directors, presumably elected by individual stockholders, those who are in fact chosen by the voting trustees. The apparent theory of this criticism is that directors so elected are not substantially interested in the corporation itself; but it has happened that in many corporations directors of importance elected by the stockholders themselves have actually owned only a few shares of stock, and even have first acquired stock after their election. Criticism is also directed to the election of directors without any participation on the part of those who may be termed the equitable stockholders; but this is scarcely more objectionable than the system of election through the intervention of a proxy committee. In both cases the election may often be controlled by a very few individuals, with the important difference that the responsibilities of the voting trustees do not, like those of the proxy committee, end with the voting at a particular election. If actual facts are considered, the conduct of a corporation whose stock is held by voting trustees is often not unlike that of a corporation whose stock is held directly by stockholders, for the reason that in many corporations the stockholders are so influenced or tied that

the voting power of a majority of the stock may be practically controlled by very few stockholders. On the other hand, if these few are holding the stock as trustees there is established a definite responsibility and a new relation which usually makes impossible the use of the voting power in a manner that reflects purely personal or factional designs.

Another prevalent doubt as to the propriety of the voting trust has been based on the well-known doctrine of "public policy." It seems to have been assumed that a device at once so novel and so effective must be essentially iniquitous, and that such a trust is either wholly void or unenforceable on the ill defined ground of supposed repugnance to public policy, or, otherwise expressed, the policy of the law. When analyzed, these objections appear to be the expression of a conclusion unencumbered by reasoning, or, if embodied in legal argument, they are most commonly based on certain inapplicable theories. Thus, it has been objected that such a trust unduly suspends the power of alienation, an objection which is sufficiently answered by the suggestion that in practically every typical instance there has been no moment at which a complete conveyance of the shares, directly or indirectly, might not be legally effected. It has also been objected that the separation of the voting power from the ownership of the stock was in itself illegal, for some dimly stated reason, whereas in fact the voting power in the normal case continues to be attached to the legal ownership. It has further, for instance, been objected that the trust is an attempt to create a proxy for a term usually

prohibited by statute, whereas the agreement does not constitute a proxy but evidences a change of legal title. Ordinarily the conveyance is an absolute transfer, subject to certain agreements on the part of trustees, and not necessarily inconsistent with any type of public policy recognized by the law.

A reference to the literature, as distinguished from the law, of "public policy" may well include an instance of the ease with which one indulges in casual criticism of voting trusts. In Ripley's *Main Street and Wall Street* (page 120), it is said: "Then in the Bank of North America case, a voting trust, typical of a widespread practice among the great financial institutions which effectively disfranchise their shareholders, was set aside by the courts as contrary to public policy." This is followed by a quotation from the opinion of the Justice who at Special Term ruled against the voting trust in the Bank of America case, in March, 1926. The author, however, fails to refer to the later decision, in July, 1926, of the Appellate Division, in which the voting trust was upheld. And while the writer, an expert on the history of railroads, somewhat enlarges the wide spread of the practice among banks, he omits reference to the extraordinary proportion of the country's railroad mileage that, now or formerly, has been under the control, apparently satisfactory to all concerned, of voting trustees.

Another recent illustration of typical criticism appears in a review (27 *Columbia Law Review* 487; April, 1927) of the new edition of Dewing's excellent *Financial Policy of Corporations,* where, without discriminating between

two quite different processes, it was said: "A student who reads his comments on voting trusts, or holding companies will be considerably misled by the absence of any reference to the growing body of literature on the dangers of abuse of these devices."

And the device has been subject to criticism in high quarters. Thus, the Superintendent of Banks of New York has said: "Instead of eliminating stock jobbing it will encourage it. The stock jobber will know he will not have to consult the stockholders, but will go directly to the voting trustees, appeal to them personally, make a proposition, even if it sacrifices the interests of the other stockholders." Assuming that he was familiar with the limitations in voting trust agreements, it is difficult to understand just what sort of a "proposition" he had in mind.

Adverse comments upon voting trusts are also based on a supposed analogy between a public, or political, corporate body and a private corporation, and an application to the latter of the rule of the former that the majority should control. The next step is the suggestion that the voting trust prevents control by a majority and is inconsistent with democratic principles. A similar opinion has been expressed in the following terms: "The institution of the private corporation has been one of the great factors in the advance of modern society. It cannot exist without adherence to the principle of majority rule. But the majority must come honestly by their power, they must use it without injustice; and the majority in power must, at least once a year, be

the majority in interest" (Simeon E. Baldwin, 1 *Yale Law Journal,* 15). Democracy, however, is not inherent in corporate organization, and may always be destroyed legally, as may a majority of individuals be nullified legally, by sufficient purchases in a single interest. "There is no rule of law which prevents one or more persons from purchasing a majority of the shares of a corporation for the purpose of acquiring control thereof" (*Smith* v. *Gray,* 250 Pac. 369; Nevada, 1926). And to the same effect see *Robinson* v. *Benbow* (298 Fed. 561; 1924). Indeed, also, there "is nothing in the law to prevent the owners of a majority of the stock from giving proxies to the same person" (*Venner* v. *Chicago City Railway Co.,* 258 Ill. 523, 101 N. E. 949; 1913). In many early English corporations, as also in some modern instances, the aim was to place control with a majority of individuals rather than with a majority of shares by arbitrarily providing that an individual might cast only a specified maximum of votes regardless of how many shares he might own; and it is interesting to note that one writer suggests a return to this abandoned system. " 'One vote per share' has a specious ring of fairness, but it is undemocratic. . . . Plural voting in moderation can be justified, but this is plural voting gone mad" (The *Economist,* 77; 1135). The attempt, however, to model the meetings of a business corporation on those of a membership corporation or of the general courts of the old colonizing companies has disappeared in practice as well as in law, and has left the share and not the individual as the unit of membership, and the majority of shares rather than the majority of

members the final authority in the modern business corporation. The "majority of the stockholders" means a majority in interest and not a majority in number only (*Bank of Los Banos* v. *Jordan,* 167 Cal. 327, 139 Pac. 691; 1914); or, as earlier stated: "It is the law of joint stock corporations that a majority of the stockholders in interest shall control in the election of the officers of a company, and its management" (*People* v. *Albany and Susquehanna R. R. Co.,* 55 Barb. 344, 368; 1869).

This review of the more obvious features, and of some characteristic expressions, incident to the history of the voting trust may serve also as a statement of the problems which its use has presented. The essential features, both of fact and of law, which have been thus briefly suggested will be considered in some detail in the following discussion, not so much with the design of either condemning or justifying the device, as of making plain the development and present position of the voting trust.

II

THE CONTENTS OF VOTING TRUSTS

The significance, object and effect of voting trusts, suggested in the preceding paragraphs, will appear more clearly from an examination of the contents of typical voting trust agreements, and especially of the provisions concerning the powers and obligations of voting trustees, the limitations upon the exercise of those powers, and the dissolution of such trusts.

As regards the corporation, the voting trustees are the owners of the stock registered in their names. The voting trust agreement, and also the certificates, commonly contain the provision that the trustees have all the rights of legal owners, and that the certificate holders shall have only such beneficial rights as may be specified in the agreement. Apparently by way of extra caution, the provision was extended, in the case of the so-called deposit and option trust agreement of the Consolidated Railroads of Cuba, and included also the statement that the certificate holders, "are strictly limited to the beneficial interest expressed in this agreement as a contractual relation with the trustees, and have no rights in, or relations with, the Consolidated Railroads as stockholders or otherwise."

The trustees thus become entitled to receive dividends

as declared. The complement of this appears in the agreement on the part of the trustees to pay to the holders of their trust certificates such amounts as may be received as dividends upon the stock held by them in trust. This often appears only in the form of voting trust certificates embodied in the agreement, but should preferably appear also in the covenants of the agreement itself. In the event that a dividend is paid by the corporation, the voting trustees, as stockholders of record, receive the amount called for by the aggregate number of shares held by them, and this in turn they distribute proportionately among the holders of their trust certificates. As a matter of practice this process may be simplified by the filing, on the part of the trustees, of suitable dividend orders and by the distribution of the dividend by the company directly among the holders of the trust certificates. And, indeed, a provision specifically authorizing this step may be incorporated in the agreement (American Seating; American Writing Paper).

Such an arrangement was incorporated in the Northern Pacific voting trust with respect to trust certificates registered in Berlin, registration there being "treated as the registration of the stock therein stated," and the trustees being authorized to arrange with the company so that the dividends on the stock represented by such trust certificates should be paid directly to the holders of the latter as registered in Berlin. A similar plan was followed in the voting trust of the Allis-Chalmers Manufacturing Company, the company agreeing to pay dividends, on request of the trustees,

directly to the registered holders of trust certificates. In the case of the Maxwell Motor Company, however, the voting trustees simply agreed to pay the amount of dividends, as received, forthwith to the trust company, acting as their agent, for distribution among the certificate holders as registered on the books of such agent.

It is obvious that if the voting trust were created under conditions allowing a stockholder to retain his stock instead of exchanging it for trust certificates, the practical position, as to dividends, of such non-depositing stockholder would be unchanged. If a dividend were declared, he would in such case receive it directly from the corporation instead of through the voting trustees, and he could also exercise the futile power of voting on his shares of stock at meetings of stockholders.

The full amount received by the trustees as dividends may not always be distributed, as it has infrequently been provided, and more commonly of late, that the trustees might withhold the amount of their necessary expenses (Security Life and Annuity) or even an amount both for their expenses and for their proper compensation (Northern Pacific; Bankers Trust; International Agricultural Corporation). The Standard Oil trust agreement fixed a liberal maximum within which the trustees could determine their own salaries, which were payable out of the trust fund. In the voting trust of the Allis-Chalmers Manufacturing Company it was properly agreed, as the company was a party to the agreement, that the expenses of the trustees, as for counsel,

agent and registrar, should be paid by the company. The trustees, in this regard, effaced themselves by the following unusual provision: "The voting trustees will make no charge for their services as such," as was done in the case of the Central Hudson Gas and Electric Corporation. In the case of the Philadelphia Rapid Transit Company, the company being a party to the agreement and apparently only for this purpose, it was provided that the company should pay the expenses of the agent, registrar and voting trustees and also "reasonable compensation for their services"; and a similar arrangement was effected in the case of the Brooklyn-Manhattan Transit Corporation. This detail was made specific in the Chicago Great Western voting trust by stating the annual compensation which was to be paid to the voting trustees by the company, although the company was not a party to the agreement. The Erie plan of December 1, 1877, contained the provision, as to the voting trust, that "the expense of conducting such voting trust, including the remuneration of the voting trustees, shall be borne and paid" by the new company. The reorganization plan of the Omaha Water Company provided for a voting trust and also that the "expenses incurred in carrying out these provisions with regard to the control of stock are to be borne by the new company."

The terms of the Island Oil and Transport Corporation voting trust were drawn with more care, reading: "The Trustees shall be indemnified and saved harmless from any and all expenses, damages and other liabilities

arising out of the acceptance of this trust and the issuance of the voting trust certificates hereunder, each certificate holder being liable for and agreeing to contribute his proportionate share thereof; and whenever any fund shall come into the hands of said Trustees for distribution they may deduct therefrom a sum sufficient to indemnify them as aforesaid." It so happened that this company went into a receivership not long before the stated termination of the trust, whereupon the trustees caused the annual meeting to be adjourned until after the termination, in order that the stockholders might be qualified to vote. The notice of termination offered the retransfer of the stock subject to certain payments including 1½ cents per share as "the proportionate share of the expenses and liabilities of the Voting Trustees." The par value of the shares was $10., and this item amounted to over $38,500.

In the voting trust of the International-Great Northern Railroad Company, it was stated that, in the event of a sale of the stock, before any distribution of the proceeds of such sale the Trustees, holding 74,991 shares, might deduct their expenses under the agreement and of the sale, and "compensation to the Voting Trustees to the amount of $1. per share of stock sold, or the Voting Trustees may agree with the Company that it will pay such compensation and expenses."

The voting trust of the Columbia Phonograph Company left the trustees rather adrift with the suggestion that they were entitled to compensation and that they might "arrange with the Company for the payment of

such compensation, expenses and liabilities." How this could be arranged was completely provided for in the voting trust of the Wickwire Spencer Steel Company, which contained the additional recital that the trustees were "expressly empowered to do anything that is necessary to produce the passage of all votes that may be required in order to provide for the payment of such expenses and remuneration by the company."

But if the company is not a party to the agreement, its payment even of the depositary's fee, if questioned, would be *ultra vires* and indeed not justified by the custom in this regard. (*Clark* v. *National Steel and Wire Co.,* 82 Conn. 178, 72 Atl. 930; 1909).

There should be expressed in the agreement the obligation of the trustees to issue trust certificates for any further shares of stock that may be tendered to them, in order to meet the case of the issue of trust certificates with respect to additions to the capital stock for new property (as occurred in the Chicago Great Western, 1913), or the case of the issue of stock by way of a stock dividend (as occurred in the International Harvester, 1910). This provision should also be included in order to comply with the statutes on the subject, where there are such, and further in order that the voting trust agreement may be equally for the benefit of all stockholders desiring to avail themselves of it. The 1923 voting trust of Boston and Maine preferred gave the trustees the right "to refuse to accept the deposit of any shares," a provision which in some jurisdictions would of course be improper. Not unlike this is the case of the Howe Sound Company,

a Maine corporation. The voting trust of January 3, 1918, was amended May 20, 1918, with a provision fixing August 1, 1918, as the final date of deposits unless extended by the trustees. This limitation, however, was never enforced, and was removed by the extension agreement of 1922. In this instance the agent of the voting trustees was a trust company in New York, which might well hesitate to act under such amended agreement.

Provision should also be made to cover the case of an offer to stockholders of an issue of securities or new stock, in order that the trustees may subscribe for such an amount of stock as their certificate holders may elect to take. Such increase of stock within the period of the voting trust occurred, for instance, in the Erie, Baltimore and Ohio, American Gas and Electric Company, International Agricultural Corporation, and the Denver and Salt Lake. In such a case, the voting trustees should be empowered, if provided with funds by their certificate holders, to purchase such stock, or to sell the subscription rights for the benefit of those not concurring in such purchase. Such a contingency is not always anticipated in detail by the terms of a voting trust, although in that of the Allis-Chalmers Manufacturing Company it was agreed that, in the event of the offer of new stock, a trust certificate holder might, at least two days prior to the last day for effecting subscription, deliver to the trustees, funds and a suitable request, and the trustees would thereupon make the subscription and in due course issue a trust certificate with respect to the stock so taken (*cf.* Guaranty Trust; Richmond Radiator). A variation appeared

in the voting trust of the Penn Seaboard Steel Corporation, which gave the trustees power, to the extent that "rights" were not exercised by their certificate holders, to subscribe and pay for the new securities in behalf of any other certificate holders. The voting trust of the Wickwire Spencer Steel Company apparently went rather far in giving the trustees power to waive any rights with respect to stock held by them, although such a power would be important, in a jurisdiction giving stockholders a preemptive right, if it became desirable to take in new interests.

Offers of notes by the American Power and Light and of convertible debentures and voting trust certificates for new common stock by the Baltimore and Ohio were not made to the stockholders, however, but directly to the holders of trust certificates, a method properly available when formally approved, as by the certificate holders authorizing the voting trustees to vote as stockholders to approve an offer of bonds by the company directly to the trust certificate holders themselves (Seaboard Air Line, 1906).

When the Tennessee Copper and Chemical Corporation doubled its common stock in 1919, the subscription rights were issued to the holders of voting trust certificates and they subscribed to 357,000 out of 400,000 new shares. In the same year the Island Oil and Transport Corporation, which owned all the stock of the Island Refining Corporation, offered directly to the holders of voting trust certificates for its own stock the right to subscribe to new bonds of the Island Refining Corporation. And when the

Howe Sound Company in 1925 issued subscription warrants for new stock, it sent the warrants indifferently to stockholders and holders of trust certificates and stated specifically that for the purpose of the issue the holders of voting trust certificates were deemed stockholders entitled to subscribe. Such failure to discriminate between the forms of such securities is thus becoming rather common, and indeed might have the effect, as against such a company, of a recognition of the argument that a trust certificate holder should be deemed for some purposes as a stockholder (see page 177).

When, however, the Gulf States Steel Company, declared a 25 per cent. stock dividend on its common stock, the company, by some method, held in its treasury voting trust certificates for more than the required amount and made distribution of them among the holders of outstanding common trust certificates.

The trustees as well should specifically agree to issue new trust certificates, in exchange for those surrendered, at any time during the continuance of the trust, thus giving to the trust certificates the same degree of transferability as stock certificates would ordinarily have; a detail which commonly is provided for only by an ordinary recital in the certificates as to the fact and method of transferability.

Very rarely is any limitation placed on the freedom of transferability in the voting trust agreement itself. The trust of the common stock of the Chemical Foundation, a trust extending for over sixteen years, contained the ordinary provisions as to transfers, with the following

addition, doubtless in harmony with the motives which prompted the incorporation and the trust: "No such transfer shall, however, be permitted unless and until the consent and approval of the Board of Directors of The Chemical Foundation, Inc., evidenced by a suitable endorsement on the Trust Certificate to be transferred, shall have been obtained." In the voting trust of the Mexican Seaboard Oil Corporation holders of trust certificates originally agreed not to sell without giving other holders a right to buy at the price first offered. Or such a limitation may arise from a collateral agreement. In the case of the Reid Ice Cream Corporation the holders of more than a majority of the common trust certificates agreed among themselves, and with the bankers who underwrote a part of the stock of the company, not to sell their holdings during the continuance of the voting trust. However the limitation might be imposed, the certificates affected by it could not be listed, for instance, on the New York Stock Exchange. By way of analogy, a provision in the by-laws that shares of stock might not be sold without the approval of the board was held void in *State* v. *Olympia Veneer Co.* (138 Wash. 144, 244 Pac. 261; 1926). But a provision in the certificate of incorporation, and recited in the stock certificate, that transfers of stock were subject to approval by the board of directors was upheld in *Wright* v. *Iredell Telephone Co.* (182 N. C. 308, 108 S. E. 744; 1921).

The trustees ordinarily agree that in voting the stock held by them they "will exercise their best judgment from time to time to select suitable directors, to the end that

the affairs of the company shall be properly managed, and in voting on other matters which may come before them at any stockholders' meeting will exercise like judgment" (Erie; Northern Pacific; Southern; Bankers Trust). This recital is sometimes limited, as by the recital "in accordance with the purposes first above set forth" (Reading; Baltimore and Ohio). The voting power in this particular is sometimes subject to control by others than the trustees, either by the holders of the trust certificates (Central Fuel Oil) or by the holders of other securities for whose benefit really the trust agreement may have been created.

In the case of the Atlantic and Pacific (1880) while the voting trustees nominally had the right to elect the board of thirteen directors, it was provided that they should elect six directors nominated by the Atchison, Topeka and Santa Fe and six directors nominated by the St. Louis and San Francisco, and should themselves actually choose the thirteenth director only if the two roads interested could not agree on a nominee.

An identical arrangement was made, more than forty years later, in the reorganization of the Denver and Rio Grande Western Railroad Company. All the common stock, held in equal shares by two other roads, was placed under a voting trust, and of the nine directors four were to be named by each of the two companies and the ninth by them jointly or, if they failed to agree, by the voting trustees. In the case of the Sullivan Mining Company, all of the stock of which was held equally by two other companies, an analogous case of joint control, provision

was made for equal representation not in the directors but in the voting trustees. Each company named two, and the fifth, serving for only one year, was named by each company alternately. With the suggestion that the injured party would have a remedy if the joint control should be used fraudulently, the voting trust was upheld (*Day* v. *Hecla Mining Co.*, 126 Wash. 50, 217 Pac. 1; 1923).

The plan of the Hudson and Manhattan Railway (1913) provided that as long as five per cent. had not been paid in any preceding year on all adjustment income bonds the voting trustees should elect as directors those approved or nominated by a meeting of the holders of the adjustment income bonds until one less than a majority of the board should be elected as so approved. In the plan of the People's Water Company the voting trustee was required to elect as the nine directors four nominated by bondholders, four nominated by those having the beneficial interest in the stock, and a ninth director named by the eight thus selected. Thus, under the readjustment plan of the Philadelphia and Reading (October 1, 1894), which however was later abandoned, it was proposed that the stock should be held by the Central Trust Company and should be voted by it, in electing a president and half of the board of managers, as directed by the holders of the general mortgage bonds, and in electing the other half of the board as directed by the holders of the "assented" stock trust certificates, until "all the coupons and interest purchased under this plan shall be paid and cancelled by the Railroad Company"; and thereafter,

until the maturity and discharge of the general mortgage, it should be voted with respect to one-third of the board as directed by the holders of the general mortgage bonds, with respect to one-third of the board as directed by the holders of income bonds, and with respect to one-third of the board and the president as directed by the holders of "assented" stock trust certificates.

In the plan of the creditors' committee of the Central Iron and Steel Company (May 1, 1915) it was provided that during the trust, which was to endure until all the debentures and bonds of the new company were paid, of the nine directors elected by the voting trustees the bondholders, the creditors and the stockholders should each nominate one-third; and that after the debentures had been paid the bondholders should be entitled to nominate six directors.

There occur many types of restrictions. Thus it was arranged (Pacific States Lumber Company) that the choice of a majority of the board should, so long as the company's twenty-year bonds were outstanding, be left to the nominees of two investment houses which brought out the bonds. Again, the trustees were obliged (Julius Kayser and Company) to elect one director designated by a specified banking firm. In the plan of the Hudson Navigation Company local pride was cultivated by the statement that in the proposed voting trust of all the common stock the trustees should be required to elect a majority of the board of the new company, if practicable, from residents of Albany or Troy or vicinity.

It is rare that the right to designate directors is left to,

and apportioned among, the trustees individually, especially where they are not in part representative of certain classes of security holders. In the voting trust of the Mexican Seaboard Oil Corporation the trustees were Messrs. Sinclair, Mills and Hammond, and the principal depositors were, apparently, the two individuals last named and the Sinclair Consolidated Oil Corporation. In the agreement the trustees "agree to vote said stock at all elections of Directors held during the life of this agreement for the election of a Board of Directors of the Company consisting of nine members, three of whom shall be nominated by H. F. Sinclair, one by Ogden Mills and five by John Hays Hammond (of which five one shall be Harry Payne Whitney or his nominee) or their respective successors as Trustees. During the life of this agreement, in the event of any vacancy in the Board of Directors of the Company the same shall be filled by a nominee designated by the Trustee (or his successor) who nominated the Director whose death, resignation or inability to act created the vacancy."

A most detailed limitation upon the freedom of action of the trustees as a body, in choosing directors, was introduced in the case of the American Sumatra Tobacco Corporation. The certificate of incorporation provided that the number of nine directors should not be changed until July 31, 1931, or until the number of shares of preferred stock outstanding should be reduced to 15,000, whichever should happen first. There were five voting trustees. The voting trust agreement provided that one specified voting trustee should have the right to designate two directors;

that another specified voting trustee should have the right to designate one director; that the two voting trustees last referred to should have the right jointly to designate one director; that two other voting trustees should have the right jointly to designate four directors, or in case they were unable to agree, to nominate each two directors; that the four voting trustees above referred to should have the right jointly to designate the ninth director, subject to the provision that the fifth voting trustee named in the agreement should, as long as he continued a trustee, be deemed to have been designated under this provision.

Aside from the election of the directors, the actual voting power of the trustees, while of course subject to the terms of the stock held by them, may be further limited by the terms of the voting trust agreement itself. In the early instance of the South Carolina Railroad it was proposed that the voting trustees be subject to instructions by the holders of the second mortgage bonds. So in the case of the Mobile and Ohio the trusteed stock was voted under the control of security holders (*Mobile & Ohio R. R. Co.* v. *Nicholas,* 98 Ala. 92, 12 So. 723; 1893). In the case of the First Security Company the trustees were subject to directions by two-thirds of the certificate holders. Again, in the case of the Oregon Railroad and Navigation (1896) the trustees were, as to certain questions, subject to instructions from a majority of all certificate holders, and as to other questions from a majority of each class of certificate holders. An extreme limitation was expressed in the case of the International Nickel (1911, 1912), in which the voting trustees had

power to vote on the election of directors, on approving the acts of the directors, on amending the by-laws, and on routine matters; but before voting on other matters they were obliged to secure instructions by letter from the registered holders of their certificates and vote on such matters "for each holder to the amount of his holding as directed by him." Under the trust of the Bath Portland Cement Company the voting trustee, a trust company, was required to vote as instructed in writing by the majority of a committee of three appointed in writing by the holders of a majority of the outstanding trust certificates. Naturally, as in this instance, it is customary when a trust company is the sole voting trustee that the certificate holders are given a voice in controlling the choice of nominees for the board of directors, as well as in other matters.

The voting power of the trustees on certain subjects has often been specifically restricted, the trust agreement in some cases only paraphrasing the terms of the company's certificate of incorporation, but even in those cases restoring to the certificate holders certain rights which otherwise might be exercised absolutely by the voting trustees. One of the most substantial of these limitations is the provision under which the trustees agree not to vote in favor of the creation of superior rights, in the form either of additional preferred stock or of a new mortgage, without the express consent of the holders of a certain proportion of the outstanding trust certificates. This restriction appears not to have been common in the earlier voting trust agreements, and was not included even

in that of the Southern Railway (1894), a circumstance which gave occasion for a practical illustration of the fact that voting trustees do not regard their position as an opportunity for power rather than an obligation of service. When, in 1906, it was proposed that the Southern Railway should place on its property a new mortgage of $200,000,000, the president of the company addressed to the voting trustees as holders of the control of the stock a formal letter approving the plan. The voting trustees, instead of proceeding to exercise their rights, indicated their policy by the following reply: "In a matter of such importance we should prefer to submit the proposition for the approval of the holders of our stock trust certificates before taking final action thereon, and this we shall proceed to do at once in order that we may be prepared when necessary to take such action in the premises as may be legally requested of us as stockholders." And yet it has been said that under this voting trust "the Morgan-Baker alliance have absolutely controlled the property for twenty years, to the exclusion of the stockholders. . . ." (Samuel Untermyer, *A Legislative Program,* 1914, p. 20.)

This omission was supplied in the Reading reorganization plan (1895), and accordingly the Reading voting trust agreement (1897) provided that the voting trustees "will not, nor will any of them, consent that (1) any mortgage, additional to the mortgage of $135,000,000 heretofore authorized, shall hereafter be put upon the property formerly constituting the system of the Philadelphia & Reading Railroad Co., and Philadelphia &

Reading Coal & Iron Co., or that (2) the amount of the first preferred stock of the Reading Company be increased, except after they shall in each instance have obtained the consent of the holders of a majority of the whole amount of each class of preferred stock trust certificates given at a meeting of such certificate holders called for that purpose, and also the consent of the holders of a majority of such part of the common stock trust certificates as shall be represented at such meeting; the holders of each class of stock trust certificates voting separately; or that (3) the amount of the second preferred stock be increased except with like consent by the holders of a majority of the whole amount of second preferred stock trust certificates given at a meeting of the holders of second preferred stock trust certificates called for that purpose, and also with like consent of the holders of a majority of such part of the common stock trust certificates as shall be represented at such meeting; the holders of each class of stock trust certificates voting separately."

A similar provision had also been included in the voting trust under the reorganization plan of the Northern Pacific (1896). This led, in 1897, to the following comment: "One improvement we note in the more recent agreements like the Reading. It is with reference to the making of new mortgages or to the increasing of the preferred stock issues, the same rights being now reserved to the holders of the voting trust certificates as would belong to them as stockholders were the shares instead of the certificates outstanding. Thus in the case of the North-

ern Pacific the voting trustees are limited in their powers to the extent that they cannot authorize a new mortgage or increase the preferred stock without first obtaining the consent of a majority of the whole amount of the voting trust certificates representing the preferred stock and a majority of such amount of the voting trust certificates representing the common stock as shall be represented at the meeting called to consider the question. We do not imagine that the voting trustees, in the absence of such a provision, would think of performing either of these acts, but it is obviously proper that the rights of the stockholders should be so safeguarded" (*Com. & Fin. Chron.*, 64; 826).

Following the reorganization of the American Bicycle Company, the voting trust (of the Pope Manufacturing Company) provided that the "voting trustees will not, however, during the pendency of this agreement, vote in respect of the shares of the capital stock of said Pope Manufacturing Company held by them to authorize any mortgage upon the property acquired under said plan and agreement of reorganization dated December 15, 1902, or any part thereof, nor to authorize any increase in the amount of first preferred stock or second preferred stock of said Pope Manufacturing Company except with the consent of the holders of three-fourths in amount of the first preferred stock trust certificates, nor to authorize any increase in the amount of second preferred stock of said Pope Manufacturing Company except with the consent of the holders of two-thirds in amount of second preferred stock trust certificates and two-thirds in amount

of the common stock trust certificates of said Pope Manufacturing Company given at a meeting called by the voting trustees for that purpose, for which notice shall be given in accordance with the provisions of Article Tenth hereof, or by the assent or approval in writing of such holders of voting trust certificates filed with the Central Trust Company of New York."

This voting trust was terminable on February 1, 1908, before which time the concern became involved, and the 1906 reorganization plan of the Pope Manufacturing Company contained the following: "Provision shall be made that during the continuance of the aforesaid voting trust (1) no mortgage shall be put upon the property of the new company or any part thereof (other than the mortgage of deed of trust herein referred to) except with the consent of the holders of two-thirds in the amount of the certificates representing the preferred stock and the holders of two-thirds in amount of the certificates representing common stock; (2) the amount of the preferred stock shall not be increased except with the consent of the holders of three-fourths in amount of the certificates representing preferred stock and the holders of two-thirds in amount of certificates representing common stock; and (3) the amount of the common stock will not be increased except with the consent of the holders of two-thirds in amount of the certificates representing preferred stock and the holders of two-thirds in amount of certificates representing common stock."

The two instances last cited indicate that the proportion coupled with such restriction may have some sig-

nificance, and that, aside from any statutory requirements, the proportion used may vary with some relation to the fact that the organizers or the controlling interests expect to be either on the defensive or, inaptly stated, on the offensive. If the former, and they wish merely to be in a position with as small an investment as possible to keep conditions as at the outset and prevent any increase of securities, they will naturally introduce the requirement of consent by three-fourths. On the other hand, if they wish to be in a position readily to take affirmative action on the lines indicated, they will obviously seek to depend on the action only of a majority.

Similarly, the reorganization plan of the Southern Iron and Steel (1911) provided that there should be no new mortgage or preferred stock except with the consent of the holders of a majority of certificates representing each class of stock. The Allis-Chalmers voting trust provided that there should be no mortgage created so long as any preferred stock remained outstanding except with the consent of holders of eighty per cent. of the preferred trust certificates as well as of eighty per cent. of the preferred stock. The United States Leather plan required the consent of eighty per cent.; the McCrum-Howell plan called for the consent of seventy-five per cent., and in the Chicago Great Western trust the consent of certificates representing a majority of preferred stock was required for the authorization of any new mortgage. The United States Motor plan (later the Maxwell Motor Co.) required for a mortgage or for new first preferred stock the consent of holders of trust certificates

representing three-fourths of the first preferred stock and a majority of second preferred and common stock, and for new second preferred stock the consent of the holders of trust certificates representing a majority of the second preferred and common stock; but the trustees were allowed to vote, without the concurrence of certificate holders, for any increase of securities provided for in the reorganization plan of October 10, 1912. In the case of the Colorado and Southern any mortgage beyond the new first mortgage and any additional first preferred stock could be created only with the consent of the holders of certificates representing a majority of the first preferred stock. The voting trust of the International Mercantile Marine provided that there should be neither any additional mortgage nor any increase of stock except with the consent of the holders of two-thirds of the outstanding preferred trust certificates.

In the Pere Marquette voting trust of 1917, which expired in 1922, the trustees could not vote to authorize any mortgage, in addition to the $75,000,000. first mortgage, without the consents of: (*a*) a majority of the outstanding certificates representing prior preference stock; (*b*) a majority of outstanding certificates representing preferred stock; and (*c*) a majority of such outstanding certificates representing common stock as should be voted at a meeting; each class voting separately. In the trust leading to the formation of the Illinois Merchants Trust Company, the trustees were giving full powers of voting, except as directed in writing by those having two-thirds beneficial interest in the stock of any of the banks con-

cerned "and except also as they may receive express directions in writing on behalf of the owner of any trust certificates issued hereunder with respect to voting, on his behalf only upon any question requiring a vote of the stockholders of any of said banks, respectively." And the trustees may be empowered, although not bound, to vote as requested by the holder of any certificate with respect to the stock represented by such certificate. (*e.g.*, General Outdoor Advertising.)

Without here entering into unnecessary refinement, it is to be mentioned that in some cases such requirement, of two-thirds for instance, is so stated as to denote two-thirds of the particular class of trust certificates outstanding while in other cases it denotes the holders of trust certificates representing two-thirds of the particular class of stock outstanding, recitals which are not in effect identical unless all such stock is held by the voting trustees.

In a number of trusts the trustees have been free to vote for an increase of stock without any consent from their certificate holders, the rights of the latter to share in the increase being protected.

The instances described will serve to illustrate the general character of these limitations, the variety of which, in the details applicable to a particular situation, is very great. The practical result of such restrictions is that the certificate holders, on the termination of the trust, if such requisite consents have not been given, receive certificates of stock bearing the same relation to the property and to mortgage liens upon it as did their

stock when originally transferred to the voting trustees. Such provisions protect the substantial property rights of the certificate holders, and are therefore doubtless justifiable, although they involve a qualification of the complete exercise by the trustees of the rights of legal owners. Such a qualification, however, by way of contract or declaration of trust is not deemed to be either inconsistent with the rights of the trustees as legal owners or obnoxious to public policy.

Provision is usually made for the termination of the trust upon a number of contingencies. Thus, as to the more typical methods:

(1) It is commonly provided that the trust shall end on a certain date or not later than a specified date.

(2) It is quite as commonly provided, in addition, that the trustees may terminate the trust at any time in their discretion.

(3) It is quite frequently provided that the trust shall terminate when, and often after a given date, a certain event has happened, such as the payment of certain dividends or of certain interest charges.

(4) It is sometimes provided that the trust may be terminated, by sale or by distribution, by the trustees, either with or without the concurrence of the holders of a certain proportion of the voting trust certificates.

It is of course possible that all of these events of termination may be included in one instrument, but that rarely occurs, while other conditions of termination, as illustrated below, are sometimes included. Naturally it may be assumed that the larger number of

voting trusts have terminated by limitation on the date fixed in the agreement (*e.g.*, International Harvester; International Agricultural Corporation; Metropolitan West Side Elevated; General Asphalt; Toledo, St. Louis and Western; United Railways of St. Louis; Chicago Great Western; Pittsburgh and Western; Cuyahoga Telephone; Wisconsin Central Railway; Pere Marquette; St. Louis-San Francisco).

The discretionary power of termination vested in the trustees is technically desirable, to avoid any claim of illegal restraint on the power of alienation, and it is also of practical importance, although the exercise of this power seems to have been comparatively infrequent (*e.g.*, Bankers Trust; Guaranty Trust; Colorado and Southern; Michigan State Telephone; Northern Colorado Power; Northern Pacific; Southern Railway; International Mercantile Marine). Seldom does a discretionary termination occur before the object of a voting trust seems to have been accomplished, as when the National Railroad of Mexico voting trust of 1902 was dissolved in 1903, apparently as an incident to new arrangements with the Mexican Government, and when that of the International Mercantile Marine was dissolved in 1915, after the company defaulted in the payment due October 1, 1914, on its bonds. In the latter instance the voting trustees "deemed it proper . . . to dissolve the voting trust so that the company's shareholders may be in a position to act independently as they may deem best for their own interests in case a readjustment of the company's finances and capitalization shall be necessary."

The discretionary power of termination under the Chicago Great Western voting trust was to be exercised on sixty days' notice and was subject to the unusual limitation that it should be "with the concurrence of the Reorganization Managers." The trustees have also, in a ten-year trust, been empowered to dissolve in part or in whole at any time by unanimous action, or to dissolve in whole after seven years by the act of the majority (National Asphalt), while in the case of the Midland Valley the trustees were given the power of terminating after May 1, 1918, a trust which might continue for about six years thereafter.

Upon such a termination, the voting trustees formally adopt a resolution of termination or dissolution, a form of notice of such action, and a form of call for the surrender of the outstanding trust certificates in exchange for stock certificates. When the Northern Pacific trust was thus terminated, by the discretionary action of the trustees, prior to the date fixed in the agreement, the trustees also reported quite fully to their certificate holders (November 12, 1900), in part as follows: "Pursuant to the plan for the reorganization of the Northern Pacific Railroad Co., dated March 16, 1896, and 'in furtherance of the independent reorganization and administration of the property and to promote and protect the value of the securities of the new company,' Messrs. J. P. Morgan & Co., as reorganization managers, delivered to the undersigned, as voting trustees, under the terms of an agreement dated December 1, 1896, the common and preferred capital stocks of the Northern Pacific Railway Co., for

which our trust certificates have been issued and are now outstanding.

"By the receipt of these Northern Pacific shares the voting trustees possessed and became 'entitled to exercise all the rights of every name and nature, including the right to vote in respect of any and all such stock.'

"As stockholders of record, the voting trustees have received all dividends paid upon these shares and have caused the same to be distributed as received to the holders of the trust certificates.

"In voting the stock held by them, the voting trustees have exercised their best judgment, from time to time, in the selection of suitable directors, to the end that the affairs of the company should be properly managed.

"The annual reports issued and distributed by order of the directors during the past four years to the holders of the trust certificates and various securities of the company have given prompt and full information to all parties in interest, regarding the directors and officers selected, and the management thereby secured by the voting trustees in the exercise of their voting power and the administration of their trust.

"Although the first day of November, 1901, was fixed as the date for the expiration of this trust, yet it was provided that at any time the voting trustees might call upon the holders of the stock trust certificates to exchange them for certificates of capital stock.

"By reason of the evidence of financial strength, conservative management, skillful and profitable operation, superior physical condition of the property and the rea-

sonable prospect of continued prosperity of the Northern Pacific Railway Co., the voting trustees, in the exercise of their discretion, have decided to now terminate their trust and to distribute on January 1, 1901, the shares of stock they hold in exchange for their outstanding trust certificates."

This step was commented upon at the time in the following terms: "The action last week of the board of directors of the Northern Pacific Railway Company in placing the common stock on a four per cent. dividend basis has been followed this week by a wholly unlooked for announcement that the voting trust in the shares of the company is to be terminated. . . . The action is somewhat unique. Men do not as a rule yield up power readily, for there is a certain fascination in the exercise of it that makes the holder reluctant to divest himself of it; hence the fact that in this instance the voting trustees of their own volition part with the control of this important railroad property speaks volumes both as to the character of the men themselves and of the wonderful results which have been accomplished under their wise care and judgment in the short period of four years since the new company was constituted.

"The reorganization of the Northern Pacific, as is well known, was the work of J. P. Morgan & Co. Mr. Morgan's house has on more than one occasion in the history of the road come to its rescue on critical occasions, but never did it render more efficient or important services on behalf of an embarrassed concern than when, in the thorough and drastic manner for which the house is

famed, it undertook to place this large concern on its feet. . . . It is rather noteworthy that the voting trustees appear to be little concerned to give prominence to their own part in the work. It would be difficult to find a stronger list of names than that comprising the voting trust, it consisting of J. P. Morgan himself and of August Belmont, Charles Lanier, Johnston Livingston and Dr. Georg von Siemens; but they cite the facts set out in the report simply to show that they are justified in the step they have taken in handing control of the property back to the shareholders—or (to use their own language) to furnish convincing proof 'that the purposes of our trusteeship have been fulfilled and that we are warranted in now dissolving the trust'" (*Com. & Fin. Chron.*, 71; 989). Likewise the voting trustees of the Southern Railway in announcing on June 30, 1914, their decision to terminate the trust, reported in some detail on their administration and set forth striking figures showing the comparative financial condition of the property at the beginning and near the close of the trust.

An unusually serious obstacle to termination by consent was created in the ten year voting trust (1925) of the Pittsburgh Utilities Corporation, which permitted termination before the stated date of expiration by the unanimous action of the seven trustees with the consent of the holders of 98 per cent. of each class of certificates.

A recent instance of unique termination occurred in the case of the Goodyear Tire and Rubber Company. There were voting trusts of the prior preference, pre-

ferred and common stocks, all of which were dissolved as a part of the adjustment of the litigation, and the management stock, held by three persons with power to elect a majority of the board, was eliminated at the same time. And all of these voting trusts might possibly extend until the debentures, due in 1931, and the bonds, due in 1941, were paid, and the voting trust of the prior preference was subject to the company's right to redeem that stock, which was done. The termination of the trusts required the redemption of the debentures and bonds, and the redemption of those securities effected practically the retirement of the management stock. Then the concern was left with only common and preferred stock, a new issue of preferred stock, and a new issue of five per cent. bonds maturing in thirty years as against the earlier issues at eight per cent. with ten year and twenty year maturities; the whole operation representing a substantial reduction in fixed charges. Whatever may have been the merits of the litigation, and bearing in mind even the small amount of historical testimony introduced, it would seem that the record for six years was quite satisfactory, and that some part of that may be credited to stability of control.

The dissolution of the trust on the occurrence of a specific event is logically the ideal process, and this happened, for instance, in the cases of the St. Louis and San Francisco, the Erie and the Reading, upon the payment of required dividends. The earlier Frisco trust was terminable whenever, after five years, the first preferred stock had received four per cent. for two consecu-

tive years, a result which was reached as of July 1, 1901. The Erie voting trust was to terminate whenever, after five years, the first preferred had received four per cent. in one year, which occurred in the fiscal year 1903-1904. The Reading voting trust was to terminate whenever, not prior to January 1, 1902, four per cent. had been paid on the first preferred stock for two consecutive years, which condition was met by the payments made in the calendar years 1903 and 1904.

The result of what was naturally deemed a successful voting trust, especially in a system earlier productive of much litigation, is reflected in the report of President Underwood of the Erie for the year 1904, while in other cases, like the Reading (October, 1904), upon a termination of a trust, statistics have been published which would seem eulogies of voting trusts although in fact the voting trustees would themselves be the last to decline to apportion much of the credit to the operating officials.

In addition to similar events of termination already referred to (page 18) may be mentioned the provisions for termination when the income bonds had received five per cent. for three consecutive years (Atchison, Topeka and Santa Fe, 1894 plan), when the first mortgage bonds had received four per cent. for three consecutive years (Colorado Midland), when the first preferred stock had received five per cent. in one year (Southern), and when the first preferred stock had received four per cent. for three consecutive years (Union Pacific, Denver and Gulf), when the ten year deben-

tures were retired (International Products Co.), when the ten year bonds were paid (Republic Oil and Gas Co.) and when the prior preference stock, of which about $14,500,000 was under the voting trust, should by redemption be reduced to $10,000,000 (Virginia Carolina Chemical Corporation).

With respect to termination upon a specified event an extreme case was that of the Omaha Water trust, which was to continue until both classes of preferred stock had received five per cent. for five years. "Whether the five consecutive years means concurrently or alternately" the voting trustees had power to determine. While the court held that the question before it was not whether the parties might lawfully make such an agreement, but whether in fact they had made such, it nevertheless said "These provisions have the earmarks, to say the least, of an intention to provide for substantially perpetual control on the part of the committee and their successors of property which the committee acquired in trust for the bondholders" (*United Water Works Co.* v. *Omaha Water Co.*, 164 N. Y. 41, 58 N. E. 58; 1900). The St. Louis, Kansas City and Northern trust was intended to be perpetual, as was that of the Pittsburg and Lake Erie, a detail which to-day, aside from the serious question of legality, would doubtless prevent the listing of the trust certificates on any stock exchange which scrutinizes new issues with the care shown by the Committee on Stock List of the New York Stock Exchange.

A most remote event of termination occurred in the case of the Consumers' Gas Trust (1887), an Indiana

corporation whose articles of association provided that "the entire capital stock of the corporation shall be placed under the control of the board of five trustees and their successors, who shall be stockholders in said Company, which said board of trustees shall have full, complete, exclusive and irrevocable power during the continuance of this corporation to hold said stock and to vote the same as fully and completely as if they were the owners of said capital stock, to elect directors as above provided, and to fill any vacancy that may occur in said board of directors. Said entire capital stock shall be voted as a unit, and, in case said trustees shall not agree as to how said stock shall be voted, the majority of them shall cast the vote of the board. If a vacancy should occur in the board of trustees by death, resignation, removals from the city of Indianapolis, or otherwise, such vacancy shall be filled by the remaining members of the board; and, in the event of the failure of such board to fill such vacancy the Marion circuit court shall, upon application of any stockholder, after said trustees shall have had ten days' notice in writing of such application and shall have in the meantime failed to fill such vacancy, appoint some competent person to fill the same." The articles of association also provided for the issue of trust certificates, and these as issued recognized the right of the trustees to hold the stock "during the continuance of the Consumers' Gas Trust Company as a corporation." Litigation over this extraordinary situation (*Consumers' Gas Trust Co.* v. *Quinby,* 137 Fed. 882; 1905) had to do not with the legality of the arrangement itself, but with

the question whether, the company's principal authorized business having ended with the exhaustion of its supply of natural gas, the assets of the concern should not be distributed among the certificate holders.

Such inclusion in a certificate of incorporation of the essential facts of a prospective voting trust is rather an inversion of logical procedure and is not at all common (*cf.* page 109). An early instance is that of the New York, Lake Erie and Western, the certificate of incorporation of which (April 26, 1878) not only set out in full the reorganization plan of December 14, 1877, but also contained the following provision: "In accordance with the provisions of a certain plan and agreement, which is hereinafter inserted, and is hereby made a part of this certificate, the power of voting in respect of one-half of the preferred stock, and one-half of the common stock to be issued by this corporation, shall be lodged with voting trustees, of whom Sir Edward William Watkin, Thomas Wilde Powell, Esq., and John Westlake, Esq., shall be the first. From time to time the voting trustees for the time being may fill any vacancy occurring in their body and may add to their number, and may exercise their power of voting by a proxy, appointed under the hands of a majority of them for the time being. This trust shall continue until the full dividend shall have been paid on the preferred stock for three consecutive years. The said half of the common and preferred stock, respectively, shall be actually vested in and held by said trustees. The persons entitled to the stock subject to such trust shall receive as evidence of their equitable ownership thereof,

and of the right to receive any dividends declared thereon, certificates in the ordinary form of share or stock certificates, or as near as may be thereto, and transferable in the manner usual for such certificates, but each bearing an endorsement, stating that such certificate does not give the holder a right to vote in respect of the shares represented by it, and that the same is subject to the voting trust aforesaid." It is to be noted also, in this connection, that the bonds issued under this reorganization of the Erie required for their validity the counter-signature of the secretary of the voting trustees.

An event of termination of an unusual and quite indefinite nature was that of the New York, Ontario and Western, when it was authorized (*Laws of New York*, 1885, chap. 421) to issue bonds in exchange for its $2,000,000 preferred stock, the statute further providing: "Whenever any such exchange shall be made, the stock for which the bonds shall be issued and exchanged shall be transferred to and registered upon the books of the company in the name of Thomas P. Fowler, Richard Irvin, Jr., Thomas Swinyard, Charles S. Whalen and William F. Dunning as trustees for the New York, Ontario and Western Railway Company, who shall hold the same until all the preferred stock shall be so exchanged and transferred; and until that time the trustees aforesaid, and their successors, shall be entitled to vote upon any preferred stock so exchanged and transferred at all elections for directors representing preferred stock and at all meetings of stockholders, but such stock shall not have any rights to dividends as preferred stock or any other preferential right, except the

right of voting as aforesaid." As early as March, 1886, all but $210,000 of this preferred stock was held by the trustees. As the preferred stock of this company had the right to elect eight out of the thirteen directors until a dividend should be paid on the common stock, the practical result was that these trustees for the company controlled the board. When all but $4,000 of the preferred stock had been surrendered (1904) representatives of some $18,000,000 of common stock protested against the continuance of the trust, inaccurately assuming that the payment of a dividend on the common stock would terminate the trust. In January, 1905, the requisite dividend on the common stock was paid, and the control of the board by the voting trustees was ended, but the trust has nevertheless been prolonged until the present time. Since October, 1904, a bare majority of the common stock and $2,200 of the outstanding preferred stock has been held by the New York, New Haven and Hartford Railroad Company.

A slight variation on common practice appeared in the 1914 plan of the Laramie, Hahn's Peak and Pacific (later the Colorado, Wyoming and Eastern Railway) which provided that the voting trust should continue until all accrued interest on the income bonds had been paid, and the current interest on those bonds had been paid regularly for two consecutive years, and thereafter for such further period not exceeding one year as the trustees might deem advisable, if lawful. A further development is in the instance of the First Security Company, in which the trust was created to continue for five years "and

thereafter until the same shall have been terminated by the written direction of the holders of two-thirds in interest of the stock certificates of the" First National Bank of New York or of its successor (Pujo Committee, *Testimony*, p. 1485). Under the Chicago Railways participation agreement (1907) the trustees, therein called the depositaries, were given voting power until August 1, 1912, "and, to the full extent thereafter which may be permitted by law, until all the Consolidated Mortgage Bonds of the Railway Company which may be issued pursuant to the provisions of the Plan shall be fully paid and discharged."

Still another event of termination was adopted in the Pure Oil Company trust (1895), which, with an excess of ingenuity, provided that the "agreement may be cancelled, and the trust thereby created dissolved, only by the winding up of the Pure Oil Company or by the consent in writing, duly executed, of the equitable owners of four-fifths of the shares held in trust hereunder, and of four-fifths of all the other shares of the company, after providing in full for the redemption or purchase, at one hundred and ten dollars per share, in cash, of all the preferred and common shares of the company, at the time outstanding." The Standard Oil trust agreement of January, 1882, under which there were nine trustees, was to "continue during the lives of the survivors and survivor of the trustees in this agreement named, and for twenty-one years thereafter;" with the proviso that after one year the trust might be terminated by the vote of the holders of ninety per cent. of the certificates and after ten years

by the vote of the holders of two-thirds of the certificates. Following the adverse results of litigation (*State* v. *Standard Oil Co.,* 49 Oh. St. 137, 30 N. E. 279; 1892), the trust was formally terminated (March 21, 1892) by the vote of 736,720 shares out of 950,000 shares outstanding. The reality of this dissolution was questioned in the subsequent litigation brought by the United States against the Standard Oil Company of New Jersey and others, the Supreme Court stating the contention as follows: "It was alleged that shortly after this decision, seemingly for the purpose of complying therewith, voluntary proceedings were had apparently to dissolve the trust, but that these proceedings were a subterfuge and a sham because they simply amounted to a transfer of the stock held by the trust in sixty-four of the companies which it controlled to some of the remaining twenty companies, it having controlled before the decree eighty-four in all, thereby, while seemingly in part giving up its dominion, yet in reality preserving the same by means of the control of the companies as to which it had retained complete authority" (*Standard Oil Co.* v. *United States,* 221 U. S. 1; 1910). Another period was for fifteen years or the lives of A and B and the survivor, whichever should happen first (*Byington* v. *Piazza,* 131 App. Div. 895, 115 N. Y. Supp. 918; 1909), while one event of termination in the trust, created abroad and set aside here, of the Fisheries Company (a New Jersey corporation) was "when the last survivor of the now existing descendants of Her Majesty shall have been dead for twenty years."

Another type of the event of termination appeared in the Oregon Railroad and Navigation voting trust (August 19, 1896), which was to extend to August 17, 1906, but might be earlier terminated, among other methods, whenever the dividends on the preferred stock aggregated twenty per cent., or whenever an amount, in addition to dividends paid, sufficient to constitute such twenty per cent. on the preferred stock should be deposited in cash or its payment guaranteed by the American Surety Company or the Lawyers Surety Company or by a person or corporation of the City of New York satisfactory to the Central Trust Company of New York, the voting trustee, "it being understood that any such guaranty shall be for the payment on the first day of each successive calendar year thereafter, at the rate of at least four per cent. per annum, of the balance of the twenty per cent., theretofore unpaid." This method of termination was designed for exercise in behalf of the holders of the common stock, and it was provided that any dividends actually paid thereafter on the preferred stock within the period covered by the guaranty should accrue to the benefit of the common stock. The trust was terminated (July, 1899) upon the guaranty of Kuhn, Loeb & Co., acting for the Oregon Short Line Railroad Company (which owned at least 162,814 shares of the common stock) to pay $1,100,000 to the holders of the $11,000,000 preferred stock, in instalments at the rate of four per cent. per annum on such stock from July 1, 1899, to January 1, 1902. This guaranty, as the company had itself paid dividends aggregating ten per cent.

on the stock, fulfilled the requirements as to the termination of the trust.

A method of termination introducing an event outside the history of the company itself appeared in connection with the Bay State Company (of New Jersey), the entire stock of which was placed in the hands of H. H. Rogers, John G. Moore and F. W. Whitridge, as trustees for the benefit of the Bay State Company (of Delaware), the trust to continue until the Boston United Gas bonds, first series, had been retired by the sinking fund or otherwise paid (*cf. Quar. Jour. Econ.*, 14; 104).

Referring to events of termination, mention should be made of the case of the Southern Railway. The original trust agreement (1894) provided for termination on July 1, 1899, if at that time the preferred stock had received five per cent. in one year, and if not, then whenever such dividend should be paid. It was correctly anticipated that the semi-annual dividend payable October 31, 1902, would be one of two and one-half per cent. and thus fulfill this condition, and that the original trust would then terminate. Pursuant to the suggestions of the voting trustees, in their circular of August 27, 1902, an extension agreement was on that date executed by the voting trustees, to which the holders of a majority of the outstanding certificates had assented by October 31. The extension agreement provided that the trust should continue "until October 15, 1907, and thereafter until such day as a majority in amount of the holders of such stock trust certificates stamped as assenting to this agreement, shall, by vote

on the date of the annual election for directors of the Southern Railway Co., fix as the date of the termination of such agreement and of the rights and powers of the voting trustees thereunder; without prejudice, however, to the continuing rights of the voting trustees in their discretion to cause to be made earlier delivery of stock certificates in exchange for stock trust certificates by them theretofore issued." The indefiniteness of the date of the termination giving rise to some question, the voting trustees, when the extension agreement had become operative by the stamping thereunder of a majority of stock certificates, announced (October 31, 1902) that they had then, under the authority conferred by the extension agreement, determined that it should terminate on October 15, 1907, and that the trust certificates would then be deliverable; but the trust was continued however until 1914.

An actual termination of such a trust by the direction or concurrence of the certificate holders is uncommon (Lake Street Elevated, by eighty per cent. of the certificate holders; Texas and Pacific, by a majority; Colorado Midland, by a majority; Seaboard Air Line, March, 1908). In the case of the Quaker Oats Company the holders of a majority of the certificates, and in the case of the St. Louis, Rocky Mountain and Pacific the holders of three-fourths, had the power of termination. In the case of the St. Louis, Iron Mountain and Southern termination was made possible, and was later effected, on the direction of the holders of ninety per cent. of both the first preferred income bonds and second preferred income

bonds; and in the case of the St. Louis and San Francisco termination was provided for on the concurrence of the holders of two-thirds of the certificates of each class, at any time prior to January 1, 1902. In the instance of the Loose-Wiles Biscuit Company termination was possible, prior to a certain date, by the direction of holders of three-fourths of the outstanding trust certificates. In the Atlantic and Pacific trust it was provided that the trust might be terminated by the vote of three-fourths of the directors of the three corporations involved, the Atlantic and Pacific, the Atchison and the Frisco. In the Chicago Great Western plan a dissolution was possible on the request of the holders of a majority of the preferred trust certificates and of sufficient common trust certificates to make a majority of all of both classes.

A decade ago more voting trust agreements were being executed than were being terminated, and not always was much thought given to what would happen after theoretical termination. A "strict constructionist" trustee might naturally, as some have done, deem himself functus officio and, all the steps of theoretical termination having been properly taken, decline to do or sign anything further. As a practical matter, the problem cannot be disposed of so easily. For a striking instance, the voting trust of the Southern Railway Company terminated July 31, 1914. According to the proceedings of the company's annual meeting on October 10, 1922, the voting trustees then held 141,911 shares, as against 153,903 shares a year earlier, although in October, 1926, this

number had fallen to 4,303 shares. The surviving trustees of the Chicago Great Western voting trust, which terminated September 1, 1914, are reported to have held 42,091 shares in 1926, although none in 1927. Likewise a corporate voting trustee held stock eight years after the termination. (*Lewis* v. *Hargadine-McKittrick Dry Goods Co.,* 305 Mo. 396; 274 S. W. 1041; 1924.) This situation has been met (Gold Dust Corporation) as follows: "Nothing in this agreement contained shall be construed to deprive the Voting Trustees, or their nominee or nominees, of the right as record holder or holders of any of the securities at any time held hereunder to vote the same and to execute consents with respect thereto notwithstanding the termination of this agreement so long as they shall be or shall continue to be record holders of such securities." And in another case (New National Oil) it is provided that "the termination of this agreement shall not destroy or impair the right of said Voting Trustees to vote with respect of any stock which may not be delivered by reason of such termination." By way of final clearance of title upon termination it may be sufficient if the trustees deliver to their depositary assignments in blank to be attached to each certificate of stock held by the depositary (*Duquesne Bond Corporation* v. *American Surety Co.,* 264 Pa. 203, 107 Atl. 759; 1919).

So far as reliance is placed upon the statutes, with some exceptions, the trustees have power to vote upon the stock in their name only during the term of the agreement; but the Florida statute (1925) and that of Arkansas (1927), for instance, recognize the difficulty by giv-

ing the trustees the power to vote upon such stock "so long as such stock continues to be registered in the names of such trustees."

It sometimes occurs that the original object of a voting trust may not have been wholly accomplished during the term for which it was created. Under such circumstances it is customary for the trustees to request, and usually to recommend, that their certificate holders concur in a renewal of the trust. Thus the voting trust of the Keystone Telephone Company, of July 1, 1905, was modified and extended by the agreement of July 1, 1912, and was continued for three years more by the agreement of February 1, 1914. And of course there have been many instances of successive routine extensions by consent. Thus the trust of the Loose-Wiles Biscuit Company, of 1912, expired in 1927, that of the Huntington and Broad Top Mountain Railroad and Coal Company, of 1913, now runs to 1928, and that of the Howe Sound Company, of 1918, now extends to 1935. If holders of certificates with respect only to less than a majority of the stock concur in the suggestion, it is naturally deemed of no avail to complete the arrangements for an extension. If, however, holders of a majority in interest concur, the practice followed is the execution by the trustees either of a new trust agreement, substantially identical in terms with the original agreement except as to the date of termination (Bankers Trust) or of a supplemental agreement of extension (Southern; Interborough-Metropolitan; International Marine). Such having been executed, the trustees issue thereunder new trust certificates in place of those outstanding, or the original certificates are temporarily

surrendered and appropriately stamped with an endorsement showing that they are subject to the agreement as extended. The original agreement itself (Interborough-Metropolitan) may provide for the steps to be taken as a preliminary to an extension, and it may contain an agreement by the parties to enter into such further agreement (Virginia Iron, Coal and Coke).

Another variation of ordinary practice, involving not an extension in time but rather in form, was presented in the case of the Interborough-Metropolitan Company, in connection with the consolidation of that company with the Finance and Holding Corporation. The voting trustees of the common stock, in their circular of April 26, 1915, asked their certificate holders to give them a proxy to vote, as was done, at the meeting of June 1, 1915, for the consolidation, the proxy providing briefly: "the Voting Trust Agreement of February 6, 1911, to be effective with respect to such stock of the consolidated company as with respect to the present common stock of the Interborough-Metropolitan Company." However, it is sometimes provided in the voting trust agreement itself (*e.g.,* Guaranty Trust Company) that the trustees may vote in favor of a merger, the stock in the merged company acquired by the trustees being subjected to the terms of the original trust agreement; and it may give the trustees the power to extend but not beyond a specified date, reserving to depositors the right to withdraw their stock within thirty days after the notice of extension (Invincible Oil Corporation).

The original agreement may provide in detail as to

extension. Thus, in a voting trust of all common stock enduring for ten years or until the preferred should be retired (Nicollet Hotel), it was stated that if the preferred should not have been retired within ten years the trust should be extended for ten years in two-year periods, with privilege of withdrawals at stated periods and with power in the holders of half the trust certificates to terminate the trust at stated periods.

A practical extension may be introduced in connection with a reorganization, as when the plan of consolidation of the Seaboard Air Line Railway, of January 12, 1905, provided as follows: "The present voting trust agreement may be dissolved in whole or in part and the stock or any part thereof held in trust thereunder may be delivered in exchange for the voting trust certificates. Stock of the New Company receivable by the committee in exchange for the shares of the existing Seaboard Air Line Railway so delivered may be deposited by the Committee under a new voting trust, limited in duration to a period not exceeding five years, with Trustees selected by the Committee, and voting trust certificates under said new voting trust may be delivered by the committee to the depositors under the plan. Any stockholder of the New Company may deposit his stock under such new voting trust."

An initial provision for an extraordinary series of extensions was made in the voting trusts of two New York corporations (Interborough Rapid Transit, 1922; Brooklyn-Manhattan Transit, 1923) by which the original term of five years was possibly to be extended for five succes-

sive periods of five years each. The agreements are most elaborate, but omitting the various provisions for possible termination, it may be said that the agreements provide for election to the board of a nominee or nominees of the Transit Commission, and further if a certain time before the expiration of a five year period a statute shall not have been passed making legal provision for such representation then within a certain time limit the trustees may, or under certain conditions shall, renew the trust for a further period of five years, but not beyond a date thirty years subsequent to the creation of the trust. Likewise a possible duration of thirty years, by successive five-year extensions, appeared in the voting trust of the Fifth Avenue Bus Securities Corporation, a Delaware corporation, in 1922, but this was terminated by the trustees in 1924, in connection with the consolidation of its interests and those of the Chicago Motor Coach Corporation, whose common stock was under a voting trust, in the Omnibus Corporation.

A wholly unique form of extension was effected in the case of the Pittsburgh Utilities Corporation, organized in New York, and apparently taking advantage of the amendment of the statute. In 1923 a five year voting trust was formed. In 1925 a ten year voting trust was formed. The earlier trust was not terminated, but on its expiration new trust certificates were to be issued in place of those outstanding under the earlier trust, and it was also provided that if the later ten year trust actually terminated before the earlier the trustees under the ten year

trust might deposit all stock under the earlier five year trust.

Even when all the stock has been in the first instance subject to a trust, an extension of the agreement provides the opportunity for the stockholders to withdraw their stock from the trust. Thus, after the extension of the International Mercantile Marine trust, two stockholders owning about 1200 shares, elected to take stock instead of new trust certificates, and in many cases the proportion of the stock held directly by individuals has been considerably larger. The possibilities arising from such a situation have provoked rather strenuous criticism not so much of voting trusts as of stock exchanges. It seems to have been the rule of the New York Stock Exchange, for instance, not to carry at the same time on the list of securities open for trading both the stock of the company and trust certificates with respect to other shares of the same issue, when the public hold only a small portion either of the stock or of the trust certificates and there is thus made possible a disturbance of the market by a corner of the stock or of the trust certificates requiring for its consummation a comparatively small amount of cash. It has thus happened, when trust certificates representing the larger part of a stock issue have been listed, that the stock certificates held by others than the trustees, when the aggregate is small, have not been listed. The latter have not been so fully available for use as collateral as are listed securities, and this condition has been used rather inaccurately

to illustrate the charge that a stock exchange may thus strengthen the control of the voting trustees by indirectly forcing into their hands much stock that ordinarily would be withheld. It is interesting to compare this criticism with the early and obvious suggestion that voting trusts tended to prevent purely speculative trading in stocks. The alleged discrimination, if such it is, may easily be given an exaggerated importance, because such a minority stockholder, even in co-operation with those in like position with him, could in no event have much effect on the policy or conduct of the business, while if he really wished a loan he might readily convert his certificate into a more acceptable form of collateral.

It is also to be noted that when both stock and voting trust certificates representing the same issue of stock are on the market, the market price of the latter may be, by a fraction of a point, lower than that of the former. The difference usually is slight and not much attention has been given to the matter. However, when the voting trust of the American Chicle Company was dissolved (May, 1927), the trustees stated that, in addition to more substantial reasons incident to the improved condition of the company's affairs, the step was taken "because there usually exists a lower market price for the voting trust certificates than for the stock certificates, which is a burden upon those who might desire to sell their voting trust certificates, which, it is felt, they should no longer be called upon to bear."

In passing, mention of the minority stockholder suggests his customary first step in demanding from the cor-

poration a list of its stockholders. This preliminary to a campaign of reform is not available in securing such a list of certificate holders from trustees who are not subject to corporation laws.

With the recent multiplicity of voting trusts the requests for lists of certificate holders have naturally become more frequent and have occasioned some perplexity. Hence, occasionally an attempt has been made to provide for this contingency suitably in the trust agreement, as in that of the Brooklyn-Manhattan Transit Corporation: "No holder of a Voting Trust Certificate, issued hereunder, nor any other person, shall, however, have the right, except with the prior written consent of the Voting Trustees (to be given or withheld in their absolute discretion except that such consent shall be given upon the written request of the holders of at least five per cent. in amount of the Voting Trust Certificates), to examine the list of holders of such Voting Trust Certificates or the transfer or registration books of the Voting Trustees." A similar provision was used in the case of the Omnibus Corporation, formerly the Chicago Motor Coach Corporation.

And without such a restriction it is doubtful if trustees would invariably comply with such a request. However, especially where the trust agreement provides for meetings of certificate holders, it would seem that such a request has a reasonable basis, and in time might be upheld by such courts as tend to treat trust certificates as quite analogous to stock certificates (see page 177).

The trustees in some instances have been given the

power of terminating the trust by actually selling the stock held by them and distributing the proceeds among the certificate holders, and of doing this either at their discretion (Anthony and Scovill Company), or subject to the approval of a certain proportion of the certificate holders, or subject to some limitation as to price. While a provision permitting the surrender of the control of a concern may be somewhat inconsistent with the original design in the voting trust of holding and developing a property, still if the result of such policy produces an increase in the value of the stock one real object of the trust has been attained, and the trustees may thus procure a better return than could the stockholders, acting individually and without the power, except by some pooling arrangement, to deliver the actual control. For instance, the voting trustees of the Colorado Midland, with the consent of the holders of a majority of their certificates, sold the control to two other roads (1900). Thus also the voting trustees have been authorized to sell at a fixed minimum (Lehigh Coal and Navigation; Northern Electric Railway), merely to sell on the unanimous vote of the trustees (Louisville, St. Louis and Texas), to sell at par or better (Virginia Iron, Coal and Coke; Union Terminal Association), to sell on a majority vote of the trustees for not less than par (Chicago Southern plan), to sell by a like vote at not less than seventy-five per cent. of par (Southern Indiana plan), or to sell subject to the approval of a majority of each class of certificate holders (Toledo, St. Louis and Western; Toledo, St. Louis and Kansas City).

Or the trustees, holding two classes of stock, may sell

all, or all of either class, with the consent of holders of a majority of the certificates affected (Indian Refining Co.), or they may sell, with the consent of holders of a majority of the certificates, upon terms in the discretion of the trustees (International-Great Northern Railroad Co.); or indeed it may occur that the trustees may sell all the stock held, with the usual two-thirds consent, and on terms fixed by the trustees and approved by the certificate holders with the proviso that the trustees are not obliged to sell, even upon the request of holders of any amount of certificates (Columbia Phonograph Co., Inc.). Or indeed, as it would seem, the trustees may have unlimited power to sell all or any part of the stock (New York Railways Participation Corporation). When the ten years voting trust of the St. Louis, Rocky Mountain and Pacific common stock (1905) was dissolved in 1912, a new trust for five years was created, with power in the trustees either to sell all the deposited stock at not less than par or to sell all or any part of the deposited stock in excess of $5,500,000, at such price as the trustees might determine upon, subject to the right of depositors to elect not to participate in the sale. In another instance the trustees were given power to sell without restriction as to price, but subject to the limitation that the proceeds should be distributed among the certificate holders only after the claims of certain note holders had been paid (Milliken Bros., Inc., plan). As another method, the trustees may be empowered in the agreement not to sell the stock but to vote to sell the assets of the company (Jackson Company).

Under the Cincinnati, Hamilton and Dayton plan of

May 24, 1909, the voting trust was to expire July 1, 1916, and on that date the Baltimore and Ohio (whose president was one of the voting trustees) was to be entitled to buy the controlling stock at a price to be fixed by arbitrators. Details as to the price were modified by a supplemental agreement, October 21, 1912, between the Baltimore and Ohio and the firm of J. P. Morgan & Co., as set out in the annual report of President Willard for the year ended June 30, 1914. Under the reorganization plan of the Staten Island Electric Railroad (1902) the voting trustees were given the broad power to sell the stock on such terms as they might determine; and under the voting trust of the Long Island Railroad (February 1, 1897) the trustees agreed to sell a majority of the company's stock, reserving to the certificate holders their election as to participating in the sale (1900). In some agreements the element of possible sale has been the principal factor (*e.g.*, Baltimore, Chesapeake and Atlantic; Dubuque and Sioux City Railroad; Pacific Mail Steamship Company; Anthony and Scovill Company), and such agreements might naturally be held to create not a voting trust with power of sale but "a power of sale with an incidental provision in regard to voting" (*Hall* v. *Merrill Trust Co.*, 106 Me. 465, 76 Atl. 926; 1910).

The purpose of a voting trust, with defined powers as to the terms of sale, is well illustrated by the statement of the directors of the Fall River Electric Light Company (1927): "The directors feel that the trend in public utili-

ties indicates that shareholders should protect themselves against the possibility that control of the company might pass without each shareholder having an opportunity to secure for his holdings an adequate price. Such prices, available to all, cannot be assured at present, inasmuch as purchasers are free to obtain majority control by acquiring scattered holdings, and disregarding the minority stock not sold." The agreement, which may continue through 1936, authorizes the trustees to sell all, but not less than all, the deposited common stock at not less than $60 a share, or to sell all at such price as may be approved by holders of certificates representing three-fourths of the deposited stock. In the same year, the directors of the New Bedford Gas and Edison Light Company recommended that the stockholders tie up their stock, possibly for ten years, with power in the trustees to sell at a minimum price; and, also in the same territory, the directors of the Blackstone Valley Gas and Electric Company took similar action. About the same time such a course was taken in connection with the North Boston Lighting Properties, the Massachusetts Lighting Companies and other public utility companies in Massachusetts.

Naturally when redeemable preferred stock is held by voting trustees provision should be made for the termination of the trust, as to any stock redeemed by the company, upon such redemption, as in the Missouri Pacific and Pere Marquette. In case only part of the preferred stock is redeemed, then the trustees should have

power to determine, as by lot, which, or what part, of their outstanding trust certificates should in consequence be redeemed (American Writing Paper).

While it may be said that the effect of certain of these provisions, especially as to the control of the board and over the dissolution of the trust, is to place too much power in the hands of the voting trustees, yet it is to be noted that they have in fact refrained from exercising as much power as they might. Thus, the voting trustees of the Southern Railway consulted the certificate holders before consenting to a mortgage; the voting trustees of the Northern Pacific and of the International Mercantile Marine Company elected to terminate their trust sooner than they were obliged to; and the voting trustees of the Kansas City Southern, when the voting trust was to expire shortly after an annual meeting (1905) adjourned the meeting in order that the board for the ensuing year might be elected by the stockholders themselves after the release of their certificates, and a similar adjournment was voted in the case of the Island Oil and Transport Corporation (1922). It has also even occurred that trustees have voted for the election as directors of nominees of the minority interest (Reading, 1899).

Some of the more recent agreements contain a variety of provisions for the amendment of the agreement, as by the submission of the proposed amendment by the trustees to the certificate holders, the action upon it at a meeting of the certificate holders, and its adoption if approved by a majority in interest of the outstanding certificates. In another, and somewhat extreme, case the

process devised was the unanimous action of the five trustees, the publication of their proposed amendment once a week for two weeks and the mailing of a copy to all certificate holders, whereupon the change would become effective provided within thirty days after the first publication a disapproval were not filed with the trustees by the holders of 51 per cent. of each class of stock. Such a drastic provision might well give rise to criticism.

A normal provision in reorganization agreements and deposit agreements has of late appeared in voting trust agreements, by way of empowering the voting trustees to construe the agreement and of making such construction in good faith binding upon all parties interested (*e.g.,* Omnibus Corporation; O'Gara Coal Co.). Such grant of power may seem excessive in the ordinary case, and especially if by its use the trustees might enlarge their own powers, but it may be justified in those more complicated agreements which, extending possibly for two or three decades, are plain under present circumstances but which might be obscure as applied to later developments.

The trustees also agree to deliver corresponding stock certificates, upon the surrender to them of the outstanding trust certificates, on the termination of the trust. The voting trust agreement or the certificate may state simply that the holder will be entitled on a specified date, or not before such a date, to receive a stock certificate for a number of shares equal to the number represented by his trust certificate; while the trust certifi-

cate usually recites also that it is issued under and subject to the conditions of the trust agreement therein referred to, such reference covering the cases in which the stock certificates may in the alternative become deliverable on a date other than the calendar date fixed in the agreement. The agreement should as well make it obligatory on the certificate holders, upon the termination of the trust, to accept stock certificates and surrender their corresponding trust certificates, in order that the trust may be completely dissolved in reality as well as theoretically. As it sometimes happens that trust certificates may have been lost, or that some certificate holders may not have received promptly the actual notice of dissolution, the duties of the trustees may be effectually terminated by providing that upon the dissolution of the trust the trustees may, after due notice, deposit stock certificates with a trust company (Interborough-Metropolitan; Allis-Chalmers; Guaranty Trust), or with the company itself (Richmond Radiator) to be exchanged for trust certificates when surrendered, the duties of the trustees ending with such deposit.

When thus a voting trust has been terminated, and some holders of trust certificates delay the withdrawal of their stock certificates, if a meeting of stockholders should be held one slight practical difficulty arises from such delay. The trust certificate holder is not entitled to vote as a stockholder, and the trustees, although stockholders of record, are not entitled to vote under the agreement. This situation may be met, in some degree, by the trust certificate holder giving a proxy

to the trustees in whose name his stock is still standing. This might serve to protect the trustees for any action thus taken, and might be sufficient unless the company itself should insist that, the trust having for all purposes expired, the trustees were thus disqualified from voting, and also that a proxy from the holder of a trust certificate could not be of any effect.

As to the personnel of the voting trustees, the choice of the first set is a practical matter controlled chiefly by the design of giving proper representation to all substantial interests concerned. Where the trust is created as an incident of a reorganization the trustees may be named in the reorganization agreement (Chicago Great Western; Northern Pacific; Wisconsin Central, 1899; New Orleans, Mobile and Chicago Railroad) or they may be the members of the reorganization committee (International Fire Engine; Interstate Telephone; Kinderhook and Hudson Railway; Missouri, Kansas and Texas; United Button) or their designation or approval left to the reorganization committee (McCrum-Howell; Indian Refining Co.; Whitney Co.; United Coal Co.), although the committee's power in this regard is at times somewhat restricted. Thus, of three trustees only one was to be named by the committee and two by those supplying new funds (McCall Ferry Power). In an instance of seven trustees, only one was to be named by the committee and six by an individual acting practically as a syndicate manager (Denver, Northwestern and Pacific). In one case of the creation of a voting trust without any reorganization the members of the corporation's executive

committee were named as voting trustees (International Nickel). In the case of the Kansas City and Memphis Railway, of the three voting trustees one was to be named by the company itself, one by the Kansas City Southern, and the third by a designated banking firm. In the Erie plan of August 20, 1895, it was provided that the three or five voting trustees should be appointed by J. P. Morgan & Co. and J. S. Morgan & Co. Often, if no other provision is made, their appointment is made by a reorganization committee under the general powers conferred by the reorganization agreement. The recent plan of the Chicago, Milwaukee and St. Paul provided that of five voting trustees three should be approved by the bondholders' committee, one by the preferred stockholders' committee and one by the common stockholders' committee. The final plan of the Pacific States Lumber Company (1927) included a voting trust, granting broad powers of sale, with five trustees, four being designated by four investment banking concerns, the fifth, serving as chairman, being named by the four.

With respect to vacancies occurring among the voting trustees, after their selection and before the execution of the trust agreement, the reorganization plan may provide for the contingency, as by indicating specifically that certain parties may nominate to the vacancy. This situation was met in the Alabama Consolidated Coal and Iron and the Southern Iron and Steel joint plan by the arrangement that, of the five voting trustees named in the plan, the place of Cecil A. Grenfell in this interim should be filled by the holders of certificates of deposit

for stocks of the Southern Company, the place of A. J. Hemphill by the holders of certificates of deposit for bonds of the Southern Company, the places of Pliny Fisk and Henry H. Melville by the board of the Alabama Company, and the place of Edwin G. Merrill by the other four named in the plan. In the Philadelphia and Reading amended plan (December 14, 1886) it was provided that alternates for J. Pierpont Morgan and John Lowber Welsh should be named by the Syndicate, those for John Wanamaker and Austin Corbin by the "Board of Reconstruction Trustees," and that the alternate for the fifth position should be named by the four other voting trustees. In the Northern Pacific plan (March 16, 1896) it was provided that in case of vacancies occuring prior to the actual receipt of the stock by the voting trustees, the successors or substitutes should be appointed as follows: as regards the membership of Dr. Siemens, by the Reorganization Committee of which the chairman was Edward D. Adams; as regards the membership of August Belmont, by the Protective Committee of which Brayton Ives was chairman; and as regards the three other positions, by the Managers, J. P. Morgan & Co. In the Union Pacific, Denver and Gulf plan (September 29, 1898), in which were named the five original voting trustees, it was provided that in the event of death or incapacity of any of them "prior to the creation of the voting trust" the vacancy should be filled by the survivors; while the reorganization plan of the Baltimore and Ohio provided that such a vacancy should be filled by the Reorganization Managers.

It is usually provided that any voting trustee may resign by delivering to the other voting trustees his written resignation, to take effect ten days thereafter (Bankers Trust; Baltimore and Ohio; Reading; Southern Railway); or the ten day provision may be omitted (Equitable Life). The procedure has been made more definite by the provision that the written resignation should be delivered at the office of the transfer agent of the voting trustees (General Motors); and the possibility of the remaining trustees failing promptly to fill the vacancy has been met, for example, by giving power to a trust company to nominate a trustee after the vacancy has remained unfilled a specified period. In the case of the American Phonograph Company, however, the corporate trustee found it difficult to consummate its resignation, owing to litigation over other features of the situation (*Moore Printing Typewriter Co.* v. *National Savings and Trust Co.,* 218 U. S. 422; 1910).

If a vacancy should occur after the agreement has been executed, it is usually provided in the agreement that the survivors may fill the vacancy (Erie; Southern Railway; Equitable Life; Bankers Trust; General Motors; Reading). In the Toledo Railways and Light plan the seven trustees were treated as constituting two groups and a vacancy in either group was to be filled by the surviving trustees of the group. It has, however, occurred that the right to fill vacancies has been lodged elsewhere, as, for instance, in the provision that the successor of Dr. Siemens in the Northern Pacific voting trust should be nominated by the Deutsche Bank and

elected by the remaining trustees. In the International Harvester voting trust it was provided that the successor of George W. Perkins should be appointed by a specified banking firm, the successors of Cyrus H. McCormick and Charles Deering by, in each instance, a person named in the agreement, and on his failure to appoint by another designated person, and on the failure of both such persons to act, by the other two trustees.

Under the Baltimore and Ohio voting trust the successor of each of the five trustees was to be named, respectively, by designated banking firms or institutions, with the qualification that "such appointment shall in every case be confirmed by the other voting trustees by written instrument." In a similar way in the Interborough-Metropolitan voting trust of five trustees, the successors of two were to be appointed by a designated trust company, the successors of two others by a designated banking firm, and the successor of the fifth was to be appointed as follows: the trustee in question was empowered, within thirty days from the date of the agreement, to lodge with a certain trust company an instrument naming three persons to fill the vacancy in the order named, and if none of them served the vacancy was to be filled by the unanimous vote of the four remaining trustees. In the Chicago Great Western voting trust, the right to nominate to fill any vacancy among the trustees was retained by the Reorganization Managers, and in the case of the United Railways Company of St. Louis the power to fill vacancies was given to Brown Brothers and Company, who had

been Syndicate Managers, and was to be exercised by the surviving trustees only in case the bankers failed within ten days to fill the vacancy.

In the Wisconsin Central Railway trust (1889; to be distinguished from the Wisconsin Central Company and the Wisconsin Central Railroad Company) it was provided that a successor might be appointed by the surviving trustees, subject to approval in writing by the holders of a majority of both classes of certificates. In another instance, of the three voting trustees two were apparently operating owners and one a banker, and to safeguard against an ultra financial influence it was provided that while the successor of A, the banker, should be named by a designated banking firm, the successor of B should be named by C or C's successor and the successor of C should be named by B or B's successor, the banker having the power to nominate only in case his fellow survivor did not fill the vacancy within a limited period. In the plan of Louisville, St. Louis and Texas it was arranged that the successor of one trustee should be named by the holders of preferred trust certificates and the successors of the other two trustees by the holders of the common trust certificates. In an unusual case, provision was made that the five voting trustees should be elected each year, three by the holders of first mortgage bonds, one by holders of second mortgage bonds and one by holders of leased line bonds (Atlantic and Great Western); and in the Quaker Oats plan it was provided that the trustees should be elected annually by the certificate holders.

A peculiar arrangement was effected in the voting trust of the Pittsburgh Utilities Corporation, under which there were five trustees. The successors of four were to be named respectively by four specified banking concerns. The trustees held both preferred and 240,000 shares of common stock. The latter was represented by a single trust certificate, owned by the United Railways Investment Company. That company, or the corporation holding the certificate representing the 240,000 shares, was given the right to name the successor to the fifth trustee. And it may be said in passing that the sole asset of this company, thus connected, was a majority of the common stock of the Philadelphia Company.

In another case, of a ten year trust with five trustees, if three or more trustees were acting the vacancy or vacancies could be filled by the action of three and if they could not agree then by the head of a specified trust company. If fewer than three trustees were acting, vacancies could be filled to bring the number up to three, on the application of any trustee or the depositary, by the Presiding Justice of the Appellate Division of the Supreme Court of New York, First Department, or, in case of his refusal to act, by the Supreme Court of New York County. The number being thus brought up to three, the other vacancies were then to be filled as above stated (Madison Square Garden).

By way of great precaution it has been provided that, if all the trusteeships should be vacant, the vacancies should be filled by a majority in interest of the certificate holders represented at a meeting, such meeting being

called by any holder of a certificate on the request of the holders of ten per cent. of the outstanding voting trust certificates (American Seating).

Occasionally, where representation by a trustee is apparently of a personal holding, an executor comes into the situation. Thus, provision is made (Art Metal Construction Company) that a successor may be named by a specified trustee "if capacitated to make such appointment, or in case of his incapacity, by the representative of his estate." This applied to the line of succession to two trustees, as also in the instance of the Mexican Seaboard Oil Company. There the successor of a specified trustee was to be his son, but in case the son predeceased the trustee the successor was to be named by the legal representatives of the son.

In the case of the Electric Boat Company, the voting trust came before the court in connection with a controversy between two voting trustees, and, there being a vacancy, the lower court named a trustee (*Frost* v. *Carse,* 91 N. J. Eq. 52, 108 Atl. 641; 1919). When the matter came up on appeal the court said: "In the absence of a corporate request for such action, we fail to perceive upon what legal principle the power to fill the vacancy can be taken from the corporation and voluntarily assumed and exercised by the court" (s. c., 91 N. J. Eq. 124, 108 Atl, 642; 1919). But in the typical case the corporation itself would have no share in any such action. The action of the lower court and the comment of the higher court were both wrong; but the situation was properly met when the remaining trustees elected

to fill the vacancy the court's nominee, Edward D. Duffield, who also was serving as a trustee of the Submarine Boat Corporation voting trust.

The trust agreement should, in the proper case, have suitable provisions with respect to the control of the trustees by consents or instructions given by the certificate holders, with respect to calling meetings of certificate holders, and also with respect to notices required to be given of such meetings. If the agreement does not require the request or consent of the certificate holders for any particular action by the trustees, and does not give them power over the selection of successor trustees or over the termination of the agreement, it may be unnecessary to provide either for any meetings of the certificate holders or for the giving of any notice to them. Where, however, they have any such powers, the exercise of such should be available either by concurrent instructions or by action taken at a meeting, and the method of calling such meetings, or of giving notice to file such instruments, should be more definitely set forth than is always the case.

It is interesting to note that the Standard Oil trust agreement of 1882 was much more liberal than most such agreements as to meetings, in that the trustees were required to call a meeting on the request of holders of ten per cent. of the outstanding certificates. While now, considering the more important instances, it seldom occurs that a trust company is selected to act as voting trustee, yet when this plan is followed four courses, at least, are open; that the trustee may vote the stock as

it deems best (a detail at the basis of much criticism of early voting trusts); that the trustee vote the stock as directed by a committee; that the trustee vote for the election as directors of nominees of specified parties in interest; or that the trustee vote as instructed by the certificate holders. In a case of the last type it is necessary to provide fully for meetings of certificate holders, and this was done with elaborate completeness in the voting trust of the Oregon Railroad and Navigation Company.

Prescribing any qualifications for the voting trustees is extremely rare, although as early as the Erie reconstruction plan of 1877 it was provided that each voting trustee should be a "substantial bondholder at the time of his appointment" and on ceasing to be such he should resign as a voting trustee; and in the case of the United States Pipe Line the single individual trustee was required to give a bond for the proper performance of his duties. In the case of the First Security Company it was provided that each trustee should become disqualified as such upon ceasing to hold one of certain specified offices in the First National Bank of New York.

The trust agreement may properly confer on the trustees the power to establish their own rules of procedure, a power which in any event would be naturally implied. Such rules relate to the detailed administration of the trust, such as the appointment and duties of their signing agents, depositaries, registrars and transfer agents. These appointments may in fact be incorporated in the

agreement itself, and depositaries and registrars often are thus named, coupled however with a recital of the power of the trustees to revoke any such appointment and to fill the vacancy. While as agents for the signing of trust certificates and as transfer agents the trustees not infrequently appoint individuals, yet these positions and also those of depositary and registrar are now more commonly, and usually more efficiently, filled by trust companies.

The agreement ordinarily provides that, except when otherwise specifically stated, the act of a majority of the trustees shall be deemed the act of all, although in the case of the Western New York and Pennsylvania Railway (1895) it was provided that the trustees, or those present, should vote unanimously, and in exceptional circumstances unanimous action may be desirable (*cf.*, Equitable Life).

In one case (Gold Dust Corporation), with four trustees, it was provided that the act of any two trustees should be binding, a clearly unique provision which might produce embarrassment unless the trustees were, as in that instance, exceptional men. In another case of four named trustees (Wickwire Spencer Steel Co.) there was more flexibility, the trustees being under no obligation to fill a vacancy so long as three trustees were acting, and being also given the power, in their discretion, by a majority vote, to increase the number of trustees. A still more striking departure from the orthodox procedure appears in the voting trust, possibly an "inside" arrangement, of the Butte Copper and Zinc Company,

which has this language: "The absence of any other or others of said Trustees from a meeting shall be treated and accepted as conclusive evidence that the Trustee or Trustees attending such meeting has been vested with full power to act for and cast the vote of the entire body of trustees."

The action of the trustees may be determined upon at a meeting or, without a meeting, in writing; and frequently each voting trustee may be empowered to give his proxy as trustee to any other trustee; and the trustees themselves may often act through a joint proxy, such proxy being one of their own number or any other person as variously arranged for, and as often done without any special authority other than that possessed by a stockholder of record; but their freedom to vote through a proxy other than one of themselves has at times been restricted.

The typical agreement contains a blanket provision exempting the trustees from liability for everything except their own malfeasance in office. This was materially extended in the agreement, which had many of the features of a voting trust, among the stockholders of the three banks eventually merged as the Illinois Merchants Trust Company. This provided that the trust certificate holders should be subject to the same liability as if owners of record of the stock, and that they should indemnify the trustees for any loss or liability the latter might incur on account of being holders of record. This is a just provision, especially in case of such bank stock as carries a "double liability," although it might not be

necessary in jurisdictions having as broad a statute as that of Rhode Island (Acts and Res., 1920, ch. 1925, sec. 40). The general idea was expressed in the Bank of America voting trust by the recital, as to the voting trustees, that "as holders of said stock they assume no liability as stockholders, their interest hereunder being that of trustees merely." Such a recital does not seem to be certainly effective.

It is sometimes specifically provided that a voting trustee may serve as a director or officer of the company (Maxwell Motor), and although the recital may have no real effect by way of enlarging the power of the trustee, it serves often a proper purpose merely in stating practically that the trustees may vote in their own favor. As a matter of fact, the men chosen to serve as voting trustees are selected because of qualifications which would make them valuable members of the board of directors; and in the Denver, Northwestern and Pacific Railway plan it was stated that the voting trustees should serve as directors. The voting trust agreement of the United Railways Company of St. Louis provided: "Any voting trustee hereunder may vote in person or by proxy for any other person, whether or not a voting trustee." On this subject a pertinent comment was made by the court in the case of the Philadelphia and Reading voting trust, in the following terms: "There is another point which may be touched lest it should seem to have been overlooked. The voting trust was originally intended to have five members. There are but four, one of whom, as it has been sworn, stands aside

and will take no part in the coming election. The injunction affidavit avers that the remaining three intend to choose one of their number as president of the railroad. We do not wish to be understood as implying that such an election will be valid or can stand. Even if, as we think, the power of the trustees to elect is, from its nature, and because it concerns the public, one that may be exercised by a majority, it is still held in trust, and the votes cast should be disinterested and without personal bias. The question whether one of the trustees can vote for himself is not, however, raised by the bill or presented in the prayer for relief, and we do not, therefore, think it necessary to form or express an opinion as to the law" (*Shelmerdine* v. *Welsh,* 7 Rlwy. and Corp. L. J. 87; 1890).

Mention should be made of certain provisions which have not been commonly used, as:

that the reorganization committee might designate, as earlier was more frequently done, a corporation as sole voting trustee (Chicago Southern Plan, 1910; *cf., Commonwealth* v. *Roydhouse,* 233 Pa. 234, 82 Atl. 74; 1911; *cf.,* Oregon Railroad and Navigation);

that the stock held by the trustees should be deemed also a pledge to secure the company's bonds (United Button);

that the voting trustees might pledge the stock to secure a syndicate that might underwrite certain bonds of the company (Chicago Southern plan);

that the voting trustees might pledge the stock to pay the debts of the company (Linville Improvement);

that the voting trustees might sell the stock to pay the debts of the company (Anthony and Scovill).

The number of voting trustees is usually three or five, and sometimes seven, while in two instances there were nine (Standard Oil; Crown Willamette Paper), in another twelve, all apparently serving also as directors of the company (Louisville Home Telephone), and in another fifteen (Pure Oil).

The source of the trustees' title to the stock may be indicated in the preamble of the agreement, as by the recital that the stock certificates have been delivered to the trustees by the managers pursuant to the terms of the reorganization plan (Northern Pacific; Baltimore and Ohio; Reading), or by the committee under the reorganization plan (Erie; Southern), or directly by the company itself on the order of the Reorganization Managers (Chicago Great Western), or that an individual has delivered the stock certificates to the trustees (International Harvester); or the chain of title may be shown by the recitals in the contractual portions of the instrument (Interborough-Metropolitan). The transfer of title may be from the several stockholders themselves, the agreement providing that stockholders may become parties to it by delivering their stock certificates to the trustees (General Motors); or the stockholders may become parties by actually signing the agreement (Bankers Trust) and therein agreeing to transfer their certificates. The converse of this should appear in an appropriate agreement on the part of the trustees, as to deliver their trust certificates to, or on the order of,

the reorganization managers or reorganization committee, when the entire stock has been received from those parties, or merely to deliver their trust certificates to any parties surrendering stock to them.

The stock, when so delivered directly or indirectly by reorganization managers or by a committee, usually consists of the entire issue, less a number of shares reserved, either specifically or not, for use in qualifying directors. While these few shares are not usually vested in the trustees, it must nevertheless be the fact that the actual control of these certificates should rest with the trustees. This is necessary in order to qualify new directors, if in fact necessitated by law, for with trust certificates outstanding representing all other shares it would be impossible to maintain the qualification of the board unless these few certificates were at the disposal of the trustees. In the case of the Chicago Great Western eleven qualifying shares were excluded from the trust, in the International Mercantile Marine one hundred and ten shares, in the Denver, Northwestern and Pacific plan seven, in the Reading and the Northern Pacific trusts two thousand, in the Southern one thousand, in the Erie one hundred and in the Colorado and Southern fifty. Usually these qualifying shares are thus left informally without really beneficial owners. Nevertheless, provision has sometimes been made for the correct disposition of these qualifying shares (Bankers Trust; Richmond Radiator), as by specifically placing them in the custody of the trustees for the purpose indicated. Thus, in the case of the Indian Refining Company voting trust

it was provided "that the Voting Trustees are authorized to transfer one share of stock to each of such persons as may be selected by them in order to qualify such persons to act as Directors of the Company, or to serve the company in any other capacity, and all certificates of stock issued for such purpose shall be endorsed in blank by the persons to whom issued, and shall be deposited with the Voting Trustees and held by them for the purposes of this agreement." This control of such shares was also given to the voting trustees under the Chicago City and Connecting Railways Collateral Trust, in which case the provision was indirectly attacked by an attempt to show that a director thus qualified was incapable of acting on the board, but as it was not shown affirmatively that the director in question did not also own a beneficial certificate no adverse ruling was reached (*Venner* v. *Chicago City Railway Co.,* 258 Ill. 523, 101 N. E. 949; 1913).

So in the case of the Atlantic and Pacific, thirty shares were reserved to the Atchison to qualify its six directors, the same number to the Frisco to qualify its like quota of the board, and five shares were set aside for use by the voting trustees in qualifying the thirteenth director. Strictly, of course, these qualifying shares may not be represented by trust certificates except in such a case as that of the Indian Refining Company, and certainly should not be considered available for acquisition by the public. It may, however, occur that the voting trustees hold shares with respect to which their certificates may not be outstanding under the requirements of the plan

of reorganization. Thus, in the case of the Wisconsin Central trust of 1899, the trustees held 233½ shares not represented by trust certificates; and in the case of the Philadelphia and Reading (under the amended plan of December 14, 1886) more than $250,000 of stock was not converted into voting trust certificates but was for more than five years represented only by the bankers' certificates of deposit.

As regards the custody of the stock certificates, it may be desirable, although not done in the earlier important trusts, to provide that a trust company be designated either by the trustees or in the trust agreement as depositary of the stock held by the trustees. This course was natural, for instance, when the stock in the Baltimore and Ohio owned by the City of Baltimore and the Garretts was deposited with a trust company, to be voted for three years by the president of the railroad and his two nominees. In the case of the ordinary voting trust also it is the preferable procedure (Northwestern Elevated; Louisiana and Arkansas; Long Island Railroad; Michigan State Telephone; Lehigh Coal and Navigation; H-O Co.; Loose-Wiles Biscuit). A step further may be taken by providing that the stock shall actually be transferred into the name of the depositary (California Petroleum Company), which may not be deemed as in exact compliance with such a statute as that of New York.

For simplicity of statement, reference has been made to those voting trusts under which the execution of the trust was imposed on individual trustees. In many

instances (Oregon Railroad and Navigation Co.; United Cigar Manufacturers Co.; Bath Portland Cement Co.; Ellis Granite Co.; Metropolitan West Side Elevated; People's Water) a trust company has been designated as sole voting trustee. When a trust company thus has the selection of directors, and the exercise of other powers, free from the control of the certificate holders, there is of course lost all benefit incident to the proper use of judgment and discretion by selected individuals, and such a trust cannot be designed, and cannot be expected, to produce the results possible when individuals are administering the trusts. More adequate results are obtained under such circumstances by granting to the certificate holders some share in the choice of directors and in otherwise determining in what manner the trustee shall vote the stock held by it. This is natural, as the primary functions of a trust company in connection with a voting trust are those of depositary, transfer agent, and registrar of transfers, and that of agent of the trustees in signing for them and issuing trust certificates.

The parties to the agreement are the voting trustees on the one hand, and, on the other hand, may be either the reorganization managers (Northern Pacific; Reading; Baltimore and Ohio; Chicago Great Western), or the reorganization committee (Erie; Southern; Interborough-Metropolitan), or an individual holding title to the stock (International Harvester) or the several stockholders (Bankers Trust). In another form the only signatory parties may be the trustees themselves (General Motors; Maxwell Motor), the other parties being such stock-

holders "as may become parties to this agreement in the manner hereinafter provided." Rarely the company itself is a party (Oregon Railroad and Navigation; Pure Oil; Allis-Chalmers; Philadelphia Rapid Transit; Brooklyn-Manhattan Transit), and sometimes the trust company which serves as depositary of the stock held by the trustees (Michigan State Telephone; California Petroleum; Loose-Wiles Biscuit; Central Hudson Gas and Electric). While in a sense only a declaration of trust, it may be sufficient that the agreement should be executed only by the trustees, but where the entire *res* of the trust comes to them in a single transfer and with a variety of limitations it is appropriate, whether necessary or not, that those delivering the stock to the trustees should actually be parties to the agreement.

Extension agreements also are usually signed in the first instance only by the voting trustees, but that in the J. I. Case Threshing Machine Company (November 16, 1914) for three years was signed by a single holder of trust certificates as well as by the voting trustees.

Provision is often made that every stockholder may become a party to the agreement by exchanging his stock for trust certificates (Loose-Wiles Biscuit; California Petroleum), and the propriety of this, aside from any legal necessity, is obvious. The Interborough-Metropolitan voting trust of common stock, of March 6, 1906, recited that the preferred stock might also be deposited thereunder. As the company stated: "This provision is included in said agreement for the purpose of

complying with the provisions of the statute. It is not contemplated, however, that preferred stock will be deposited under the voting trust agreement." No holder of preferred stock requested the issue of voting trust certificates under this agreement, and none was issued with respect to preferred stock. After the extension agreement of February 1, 1911, however, certificates were promptly issued with respect to more than a majority of the preferred stock; but later a large part, if not indeed all, of these preferred trust certificates were surrendered and stock certificates issued in place thereof.

While the voting trust is supposed to insure a continuous administration by a chosen group it has nevertheless occurred that the control of the company has changed during the term of a voting trust, presumably as a result of the purchase of a sufficient quantity of voting trust certificates to entitle the new parties to recognition. Such a transfer having been completed, it has readily been followed by the resignation in rotation of a number of the trustees and the election to the vacancies of the trustees representing the new holders (Seaboard Air Line, 1903; Kansas City Southern, 1900).

It may happen that, far from the expected result having been attained, the company has become further involved and a reorganization has been necessary even during the term of a voting trust (Pope Manufacturing; Detroit Southern; International Mercantile Marine; Wisconsin Central Railroad; New York, Pennsylvania and Ohio).

The introduction of voting trustees in connection with

stock pledged under a collateral trust indenture is unusual. Such stock is usually pledged under an agreement which provides that the trustees will permit the mortgagor company to vote on the stock so long as there is no default under the trust indenture. However, in the Northern Pacific collateral trust indenture of May 1, 1893, a committee of five were named, as voting trustees in a limited sense, the trustees under the indenture agreeing that the sole power of voting on the pledged stock should remain in the committee irrevocably, and agreeing also on request of the committee to give proxies to its nominees, and to assign certificates of stock for the proper qualification of those elected directors. It was further provided that the railroad should pay each member of the committee a fixed sum for attending each meeting of the committee, and should pay all the necessary disbursements of the committee, including the salary of the secretary to be appointed by the committee.

A somewhat abnormal instance of a voting trust arose in connection with the New Orleans Terminal Company, the stock of which was owned equally by the Southern Railway and the St. Louis and San Francisco Railroad Company. The Terminal Company leased its properties jointly to the two railroad companies, each company agreeing to pay one-half of the interest on the Terminal Company's bonds, and also guaranteeing jointly and severally such bonds. For mutual protection, the two railroad companies delivered their stock, aside from qualifying shares, to the Standard Trust Company of New York (since merged in the Guaranty Trust Com-

pany) under a voting trust agreement, the trustee agreeing to vote the stock as the two companies jointly directed and also to vote for three directors proposed by each company. The agreement also provided that if either company should default in the payment of its share of interest under the lease, and the default should continue for three months, the shares of the company so in default should be forfeited to the company not in default. Such default occurring on the part of the Frisco, the receivers of that road brought action to enjoin the voting trustee from transferring their portion of the stock, and at Special Term an injunction *pendente lite* was granted, the court holding that this provision of the voting trust was really in the nature of security for debt and that the forfeiture clause might on the trial be held to be void (*West* v. *Guaranty Trust Company,* 83 Misc., 609, 1914), but this decision was reversed, however, at the Appellate Division (162 App. Div., 301, 147 N. Y. Supp. 421; 1914).

Mention has not been made of instances which might be termed testamentary voting trusts (*e.g.,* Florida East Coast Railway; *Billings* v. *Marshall,* 210 Mich. 1, 177 N. W. 222; 1920; *Canda* v. *Canda,* 92 N. J. Eq. 423, 112 Atl. 727; 1921; *in re Pittock's Will,* 102 Ore. 159, 199 Pac. 633; 1921), or of the many cases of voluntary trusts formed to avoid the limitations incident to the use of corporate forms (*e.g.,* Chicago City and Connecting Railways Collateral Trust, New Hampshire Electric Railways, Massachusetts Electric Companies, Western Massachusetts Companies; *cf.,* Mass., *House Docs.,* 1913,

No. 1788; *cf.* 12 *Cornell Law Quarterly,* 198), or of the smaller number of what were practically voting trusts incident to a centralization of the control of several corporations (*e.g.,* Standard Oil Co.; *cf.* Eddy, *Combinations,* 1901 Ed., secs. 606-616). Nor, indeed, has it seemed necessary to mention specifically many normal voting trusts which illustrate no peculiar feature of practice or policy.

The foregoing examination of many typical, and some unusual, provisions of voting trust agreements may enable one to judge certainly as to the reasonableness underlying their adoption and quite as clearly as to their propriety. It serves to illustrate the care and conservatism with which voting trusts have been created under the varying circumstances produced by corporate reorganizations. The provisions reflect, as well, the controlling purpose of such trusts, and, to some extent, the probable results of their use.

Reorganization committees do not ordinarily scheme for any more power than really seems to them necessary to carry into effect such a plan as they may vouch for. They do not usually impose a voting trust in order to prolong their authority. Commonly enough such committees, and the voting trustees who in a sense succeed to their responsibilities, are thankful indeed when their work is ended, whether or not it may be really completed. When they are able to develop, or even to satisfactorily preserve, a valuable property burdened by its past, there is some occasion for appreciation, although the gratitude expressed by minority stockholders toward voting trustees

is not infrequently that defined as "an anticipation of favors still to come." The hostility to voting trusts has been largely an incident of the obvious ease with which they have been used as illustrations of the supposed operations of "banking control," while in the criticism anything creditable on the other side of the account has been obscured by rhetorical excess.

The result of the normal voting trust has been to insure to a company both stability and continuity of policy, simple features which are often of substantial material advantage to the concern and to all its stockholders. It provides certainty of really responsible management. It makes impossible any disturbing attempts at interference by minority stockholders, which is a reasonable and practical consideration to be recognized frankly and at times properly. It concentrates on a small group the duty of putting a concern into satisfactory condition, giving them both the legal power and the moral obligation to make a real effort to that end. It makes it possible for those in control to formulate a well considered program for the conduct of the business with the assurance that they may remain unhampered until the wisdom, or futility, of their plans has been demonstrated. The substantial advantages which voting trusts have produced certainly outweigh the criticisms to which they have been subjected, and these advantages cannot be successfully ignored even by those who inveigh against the "disfranchisement" of American stockholders.

III

THE LAW OF VOTING TRUSTS

The law relating to voting trusts was earlier somewhat uncertain, due in part to a lack of thoroughness and of exact analysis in many of the decisions on the subject, and due also in part to the fact that in a considerable proportion of the cases, no appeal having been taken, the state of the law rested on the opinion of a court of first instance. Suits involving the validity or effect of voting trusts have usually been commenced shortly before corporate elections and coupled with an application for an injunction, the decision on which has sufficiently determined the case so far as the pending election might be concerned, after which, unless substantial interests were at stake, the question at issue has been permitted to become largely academic. Thus in the early litigation relating to the voting trusts in the Cincinnati, Hamilton and Dayton and in the Pittsburg and Lake Erie, no decision by a higher court was secured; the sequel in the latter case being the purchase of the control of the stock by the Vanderbilt interests. In the case of the Shepaug voting trust no appeal was taken, and the refusal of the courts to enjoin the Philadelphia and Reading voting trustees from voting the stock held by them was apparently not reviewed. Never-

theless, questions relating to voting trusts have been before the courts in variety and frequency sufficient to produce a substantial body of law, from a brief review of which may be derived some principles familiar to lawyers and not beyond the experience of laymen.

The commonest and also the most indefinite test applied to the validity of a voting trust has been its relation to public policy. The application of this rule has been as elastic as were the earlier standards of equitable relief, while the restrictive force attributed to public policy has varied greatly. On the one hand is the liberal doctrine which has been expressed by Justice Holmes, then Chief Justice, as follows: "We know nothing in the policy of our law to prevent a majority of stockholders from transferring their stock to a trustee with unrestricted power to vote upon it" (*Brightman* v. *Bates,* 175 Mass. 105, 55 N. E. 809; 1900). The case of *Brightman* v. *Bates* and also that of *Greene* v. *Nash* (*infra*) were recognized as authority in *Abbot* v. *Waltham Watch Co.* (156 N. E. 897; Mass., 1927), where the court, in discussing the appointment of a stockholders' protective committee, said: "It was a legitimate and usual proceeding taken to safeguard their interests. It amounted to the formation of a voting trust and was not contrary to the policy of our law." The case of *Greene* v. *Nash* (85 Me. 148, 26 Atl. 1114; 1892) related to an extremely simple voting trust effecting a control of the stock of the Maine Shore Line Railroad Company and created obviously in the interest of the public in a certain county. And so in New Hampshire a voting

trust was upheld with the comment that "Judged by the strictest rule of a stockholder's right to the free and honest judgment of his co-stockholders, the agreement here made by more than three-fourths of the stockholders is a legitimate arrangement for carrying out their purpose." After considering various cases on the subject, the court commented as follows: "Even the cases holding the particular agreements then under consideration to be invalid usually recognize the proposition that there may be a valid voting trust" (*Bowditch* v. *Jackson Co.*, 76 N. H. 351, 82 Atl. 1014; 1912). So in a Vermont case, the court said: "The defendant says that the agreement referred to amounts to a voting trust, and is therefore illegal and void. But this result does not necessarily follow. Such agreements are not illegal *per se*. Their validity depends upon the purposes they are designed to subserve. Where these purposes are lawful, stockholders may, in the absence of constitutional or statutory restrictions, suspend for a time the right to vote their stock and vest it in others who have a beneficial interest in it or the corporate business—as corporate creditors or a trustee for them" (*Thompson-Starrett Co.* v. *Ellis Granite Co.*, 86 Vt. 282, 84 Atl. 1017; 1912).

This theory is also thus expressed: "There is no statutory provision, nor can we perceive any reason offensive to public policy, preventing a stockholder from giving another power over, or rights in, his shares in a corporation to the same extent that he might give in any property" (*Chapman* v. *Bates*, 61 N. J. Eq. 658, 47 Atl. 638; 1900). In citing this case, it was later said, in a

minority opinion in *Warren* v. *Pim* (66 N. J. Eq. 353, 59 Atl. 773; 1904), in which, however, the court was divided seven to six: "It is now settled by a decision of this court that pooling or combining of stock, where the object is to carry out a particular policy with a view to promote the best interest of all the stockholders, is not necessarily forbidden." The dissenting opinion in *Bridgers* v. *First Nat'l Bank* (152 N. C. 293, 67 S. E. 770; 1910) states this view of the law as follows: "I am of opinion that such agreements among stockholders of a private corporation are not *per se* void or against public policy, but that their validity should be determined by the propriety and justness of the ultimate purpose which is sought to be accomplished. This is now the generally accepted view. . . . There is no more objection to assigning certificates of stock in a private corporation in trust for a lawful purpose than any other property." So where three stockholders, together holding a control of the stock, agreed to vote all their stock as a unit and thus to elect directors and officers, the agreement was held not to offend public policy, as the owners of a majority of the stock might properly follow this course, their purpose being honest and free from fraud (*Faulds* v. *Yates,* 57 Ill. 416; 1870).

The principle stated in *Faulds* v. *Yates,* and likewise in *Kantzler* v. *Bensinger* (214 Ill. 589, 73 N. E. 874; 1905) was recognized in *Horn* v. *Nessen Lumber Co.* (236 Ill. App. 187; 1925), where the court said that those cases had been "repeatedly approved by our Supreme Court." However, in *Luthy* v. *Ream* (270 Ill. 170, 110

N. E. 373; 1915) a holder of a voting trust certificate, who bought it with notice of the agreement, was held to be entitled to withdraw from the agreement and to receive a certificate of stock. Oddly enough the court seemed to admit that the legal title to the stock was in the voting trustee, and then discussed the case on the theory of a separation of voting power from ownership. On the other hand it treated the agreement as a proxy, and said "there is no such thing as an irrevocable proxy." The court was largely influenced by the *Shepaug Voting Trust Cases,* although that case was essentially different. The case of *Luthy* v. *Ream* was distinguished, and a joint control contract was upheld, in *Thompson* v. *Thompson Carnation Co.* (279 Ill. 54, 116 N. E. 648; 1917) and, on the proposition "that the power to vote is inherently attached to and inseparable from the real ownership of each share," was followed in *People* v. *Younger* (238 Ill. App. 502; 1925). But, on the other hand, while *Luthy* v. *Ream* was quoted with approval in *Felt* v. *U. S. Mortgage and Trust Co.* (231 Ill. App. 110; 1923) the court added a new feature to the problem. The plaintiff held 545 shares out of 160,000 preferred participation shares issued under the Chicago Elevated Railways collateral trust and, among other things, sought to be relieved of the trust. The court held that if the trust were illegal yet as the plaintiff held a certificate issued under it he was *in pari delicto* and not entitled to relief. The application of this theory would apparently embarrass any litigious holder of a trust certificate.

Still later an attack was made on the Chicago Railways

Company participation agreement of 1907, a certificate holder seeking to have the agreement declared inoperative in so far as it gave the depositaries the right to vote and also praying that a meeting of certificate holders be held under the direction of the court for the election of directors. The bill was dismissed below (236 Ill. App. 360; 1925), and this decree affirmed on appeal. (*Babcock* v. *Chicago Railways Co.,* 155 N. E. 773; 1927.) The court recognized *Luthy* v. *Ream* on the proposition "that there is no such thing as an irrevocable proxy to vote stock not coupled with any interest in the stock itself other than the right to vote it." But such decision was deemed to have no bearing, as in this instance there was no element of a proxy, for the stock held by the depositaries had never been owned by the holders of the trust certificates; and even if there were here an element of proxy "there is an interest in the stock besides the right to vote it." Where there is such an interest, there is no power of revocation unless expressly agreed to. The court also followed *Venner* v. *Chicago City Railway Co.* (258 Ill. 523, 101 N. E. 949; 1913) on the proposition that a trust of corporate stock for the purpose of controlling the corporation is not unlawful. Thus in the Venner, Felt and Babcock cases three of the largest Illinois voting trusts, or trusts with voting powers, have been assailed without success.

And judging from the importance of other voting trusts established in Illinois not much weight seems to be given there to the somewhat adverse decisions on the subject, the effect of which it seems possible to avoid. Inci-

dentally, a valid voting trust in a New York corporation doing business in Illinois may not there be treated as ineffective (*in re O'Gara Coal Co.,* 260 Fed. 742; 1919).

The objection of public policy was likewise raised in the case of *Boyer* v. *Nesbitt* (227 Pa. 398, 76 Atl. 103; 1910), but the court upheld the agreement as containing "all the essential elements of an active trust." Repugnance to public policy was also unsuccessfully urged in connection with the trust of the stock of the Mobile and Ohio Railroad (1879). For the protection of the holders of the company's debentures the stock was deposited with a trust company, to be voted by it as directed by a majority of the debenture holders until the debentures should be paid. No more proper object of a voting trust may be found, and it is not surprising that the court found the agreement "not only valid but fair, especially as the stock had been voted for thirteen years" (*Mobile & Ohio Railroad Co.* v. *Nicholas,* 98 Ala. 92, 12 So. 723; 1893). A similar result has been reached in California (*Smith* v. *S. F. & N. P. Ry. Co.,* 115 Cal. 584, 47 Pac. 582; 1897), where it was said not to be "illegal or against public policy to separate the voting power of the stock from the ownership. The statute authorizes the stockholder to vote by proxy; . . . The right to appear by proxy implies of itself that the voting power may be separated from the ownership of the stock, . . ." In Virginia also a voting trust has been held not "violative of the public policy" of the state (*Carnegie Trust Co.* v. *Security Life, etc., Co.,* 111 Va. 1, 68 S. E. 412; 1910), although there, by a distinction that may be debat-

able, if the rights of others than the original parties were involved, the result would be otherwise (*Colonial Coal and Coke Co.* v. *Ream,* 114 Va. 800, 77 S. E. 508; 1913). So in *Brown* v. *Pacific Mail S. S. Co.* (Fed. Cas. No. 2025; 5 Blatch. 525; 1867) Justice Blatchford said: "I am unable to perceive anything in this agreement contrary to public policy, or any wise open to objection."

To the same general effect is *Winsor* v. *Commonwealth Coal Co.* (63 Wash. 62, 114 Pac. 908; 1911), which was followed in *Gleason* v. *Earles* (78 Wash. 491, 139 Pac. 213; 1914) and in *Clark* v. *Foster* (98 Wash. 241, 167 Pac. 908; 1917). In the opinion in the last case the following statements were made: "On the contrary, it has been held where an agreement is made in good faith and is for the betterment of the corporation and apparent advantage of all the stockholders, or to protect the security which sustains the corporation, and it does not appear that any illegal advantage is sought and the agreement is freely and voluntarily entered into, such contracts are not, in and of themselves, contrary to public policy. . . . It may be said finally that voting trust agreements are valid and binding, if based upon a sufficient consideration, if they do not contravene public policy or a positive prohibitory statute, and if they do not sound in fraud or wrong against the stockholders."

The right to combine for corporate control, if without elements of wrong or fraud, was recognized in *Weber* v. *Della Mountain Mining Co.* (14 Idaho 404, 94 Pac. 441; 1908), and such a combination, if the members act in good faith, is not necessarily unlawful or contrary to

public policy (*Robertson* v. *First National Bank,* 35 Idaho 363, 206 Pac. 689; 1922). But such a contract will not be enforced by specific performance if it is of indefinite or uncertain duration (*Thibadeau* v. *Lake,* 40 Idaho 456, 234 Pac. 148; 1925). And in Utah a control contract was held, as between the parties and in the absence of a statute expressly forbidding it, to be not void as against public policy (*White* v. *Snell,* 35 Utah 434, 100 Pac. 927; 1909).

On the other hand, the narrower theory is bluntly expressed as follows: "In short, all agreements and devices by which stockholders surrender their voting powers are invalid" (*Harvey* v. *Linville Improvement Co.,* 118 N. C. 693, 24 S. E. 489; 1896). The trust agreement in this case, which was to be effective only if executed by holders of a majority of the stock, was to continue for five years unless earlier terminated by the holders of two-thirds of the stock deposited, and gave a majority of the depositors power to instruct the trustees how to vote, and conferred on the trustees the power to pledge the stock for money to be borrowed to pay the debts of the company. There was here no impropriety or illegality of purpose, and yet the court unfortunately followed the decision of *Cone* v. *Russell* (48 N. J. Eq. 208, 21 Atl. 847; 1891), a case involving a clear illegality of purpose, and then indulged in the extreme opinion quoted above.

The Harvey decision was followed in *Bridgers* v. *Staton* (150 N. C. 216, 63 S. E. 892; 1909) and also in *Sheppard* v. *Rockingham Power Co.* (150 N. C. 776,

64 S. E. 894; 1909), the latter being a case in which the certificate holders had no control over the vote of the trustees, and the court treated the agreement as one depriving the stockholders of their right to vote, and so contrary to public policy and illegal; and a similar result was reached in *Worth* v. *Knickerbocker Trust Co.* (151 N. C. 191, 65 S. E. 918; 1909; 152 N. C. 242, 67 S. E. 590; 1910), although alleged to be a case of illegal conspiracy to damage the plaintiff, where the court assumed the law to be settled in that jurisdiction and spoke of "a voting trust, forbidden by the law."

Thus naturally the voting trust for a period of fifteen years in *Bridgers* v. *First National Bank* (152 N. C. 293, 67 S. E. 770; 1910), was overthrown on the bald ground of public policy, although the court admitted that in exceptional cases some good might be accomplished by such agreements. "Yet, in our opinion, the general effect is vicious and in contravention of a sound public policy." The court's reliance on the argument of public policy was perhaps too confident when, on its own theory, more effect might have been given to the federal law forbidding bank officers to exercise proxies. It appears that in this case the reason for the creation of the voting trust was that there was danger of the bank falling under the control of one man, who indeed had paid up to $500 for shares of a book value of $108, that apprehension of such control had already led to some loss both of public confidence and of deposits, and that the stockholders were aroused to action to prevent such change of control. Under such circumstances, if under any, it would seem

that a court might incline to use public policy, or public interest, as a reason for upholding such a trust. The bank's funds were used to pay the expenses of defending this action, and also to pay for the preparation of the trust agreement; and these amounts the bank later recovered (*First National Bank* v. *Holderness,* 160 N. C. 474, 76 S. E. 624; 1912).

The proposition was expressed in one of several opinions in *Warren* v. *Pim* (66 N. J. Eq. 353, 59 Atl. 773; 1904), as follows: "Any arrangement that permanently separates the voting power from stock ownership nullifies, to the extent of the stock involved, the annual submission of the question of the management of the company to the stockholders. Where, as here, the arrangement includes a majority of the stock, and extends for a period of fifty years, it renders all annual elections in the meantime a hollow form." The trust in this case was possibly void for indefiniteness and uncertainty, and presumably might have been held voidable as broader than the consents on which it was based. The opinions in the case comprise quite as elaborate a discussion of voting trusts as can be found and naturally led to some expressions which many courts would consider too sweeping. Thus it was said that the agreement was "not a putting of the shares in trust; it is a putting of false evidence of share ownership into the hands of the trustees." It was also suggested that the trust, not being coupled with any interest in the stock, was invalid, and that, there being no duty enforceable upon the trustees, it was a dry trust; although it had earlier been suggested

by Justice Holmes (*supra*): "It might be held that the duty of voting incident to the legal title made such a trust an active one in all cases." Furthermore, Justice Pitney considered the particular trust void even if the ultimate purpose were beneficial to the company. "In our law the end does not justify the means."

Perhaps undue authority has been attributed to *Warren* v. *Pim*. The decision was by a vote of seven to six, and the dissenting opinion of Justice Swayze has been spoken of in the same state as "entitled to great weight" (*General Investment Co.* v. *Bethlehem Steel Corp'n,* 87 N. J. Eq. 234, 100 Atl. 347; 1917). Several voting trusts have there been overthrown for specific defects rather than merely on the ground of public policy, and it was indeed possible to draft them so as to receive approval (*Frost* v. *Carse,* 91 N. J. Eq. 124, 108 Atl. 642; 1919). Latterly, of course, the feature of public policy has there been removed from the discussion by the statute of 1926 (see page 140).

In *Railway Co.* v. *State* (49 Oh. St. 668, 32 N. E. 933; 1892), the court turned aside to remark, rather loosely, that if the agreement had vested the stock in trustees "with the power of voting it as their interest may dictate, irrespective of the wishes or direction of the owners," it would have been void as in conflict with the policy of the corporation law of Ohio.

To a limited degree, the policy of North Carolina has been adopted in Minnesota, first in a bargaining agreement for employment for life (*Seitz* v. *Michel,* 148 Minn. 80, 181 N. W. 102; 1921), and later, in an attempt to

enforce a stockholder's liability, where the stock had been put into the name of a trustee. It was held that there was no transfer of ownership, and although it was not a real voting trust case, yet on the question whether the contract was revocable the court cites the Shepaug, Harvey and Sheppard cases (*Ewing* v. *Gmeinder,* 212 N. W. 446, Minn.; 1927).

So far as such violation of public policy is concerned, the courts of North Carolina occupy an unique position, but the great majority of courts which have considered the matter recognize that no orthodox rule of public policy is violated by the typical voting trust agreement.

Any review of opinions on this branch of the subject must necessarily verge on the field of mere dicta, chiefly for the reason that the type of public policy invoked is rather indefinite and is based on no clearly recognized principle of law. As stated by one author: "Some new class must be invented, and some new definition of public policy be found, before such a voting trust can be said to fall within any of the recognized rules which avoid a contract as being against public policy." (Purdy's Beach, *Corporations,* 1905 Ed., vol. 2, sec. 704b). And, from another point of view, as stated by Justice Swayze, in *Warren* v. *Pim* (66 N. J. Eq. 353, 59 Atl. 773; 1904): "many of the arguments urged in favor of the view that voting trusts are contrary to public policy are arguments which would very properly be addressed to the legislature; . . ." Naturally, such an agreement would fall if it involved any element which, on generally recognized prin-

ciples of law, and not applicable peculiarly to voting trusts, would render it unenforceable.

It may well be argued that legislative action aids in ascertaining public policy, and, if properly interpreted, it may do so; but it is not accurate to argue that present legislative action discloses past public policy. In the Bank of America case it was argued that the statute of 1925, withdrawing the statutory permission from voting trusts of bank stocks, disclosed that voting trusts of bank stocks had always been in conflict with the public policy of New York. The accuracy with which the legislature may be deemed to define public policy may be judged from a reference to the passage of the statute of 1925. The bill passed the Assembly with no debate, and when before the Senate it was passed quite summarily, no public hearing being held, although a memorandum from the Superintendent of Banks was filed, and the discussion in the Senate occupied possibly fifteen minutes, there being only three speakers in addition to the proponent of the bill. It is an odd circumstance that in the three months preceding that in which the amendment was passed voting trusts were formed by stockholders of at least five banks in New York City. One senator urged that the bill be made retroactive, let the argument of unconstitutionality fall where it might. Mr. Justice Martin, in *Tompers* v. *Bank of America, infra.*, significantly said: "In the State Senate not only did some of the members display an unusual interest in endeavoring to have the act affect existing voting trust agreements, but that was the probable motive for this

legislation." The proponent of the bill read a memorandum from the Superintendent of Banks, and said: "I have not any interest in the bill. It was simply given to me by the Superintendent of Banks, with this explanation. He sold me on the proposition that it is a good bill. I am still sold on that proposition." The bill was passed by a vote of 33 to 3, and signed the following day. Thus was "public policy" declared.

Bearing directly upon a discussion of public policy is the extent of the specific recognition of voting trusts by statute. The first statute on the subject was that of New York of 1901 (ch. 355) which was re-enacted in 1909 (ch. 28), and in which the five year term was changed to ten years in 1923 (ch. 787). In 1925 (ch. 120) the section was further amended so as not to apply to banking corporations. This now forms section 50 of the stock corporation law. The New York statute in its original form was adopted by Maryland in 1908 (ch. 240), and, with one addition (see page 86) and the ten year term, by Florida in 1925 (ch. 10096, sec. 19). Also in 1925 the form of the New York statute, with slight modification and with the five year term, was followed by Nevada (ch. 177, sec. 22). In 1925 Delaware also (ch. 112, sec. 18, p. 277) adopted a statute on the subject, as did New Jersey in 1926 (ch. 318, sec. 5). In 1927 the New York statute, with the five year term and without the reference to banking corporations, was adopted in Arkansas (Corporation Law, sec. 18). Also in 1927 Ohio in its new General Corporation Act (sec. 34) recognized voting trusts with the ten year term and with some vari-

ations from the earlier statutes. California (see page 165) gives a limited authorization to voting trusts, and the Virginia Code, 1924, (sec. 3800) by clear implication has recognized them since 1903. The texts of certain of these statutes, of three types, are printed at page 182.

This legislative tendency seems a quite conclusive answer to the argument that a voting trust is contrary to public policy. Certain of these statutes also serve a proper purpose in preventing a secret voting trust or an exclusive voting trust, by the provision that a copy of the agreement shall be subject to inspection by any stockholder and by the further provision that any stockholder may become a party to the agreement. The statutes leave one question open for discussion, in stating that stockholders *may* enter into a voting trust agreement for a term, not exceeding five, or ten, years, a provision which by some has been interpreted as meaning that stockholders may not enter into such an agreement for a term exceeding such limit. The practical result has been that most voting trusts, drawn with the provision in view, have been either absolutely for a term not exceeding the statutory limit or for such term and an additional indefinite period usually terminable upon the happening of some specified contingency. The latter and broader interpretation of the statute would seem reasonable.

The specific ground most frequently taken by the courts which hold voting trust agreements to be repugnant to public policy is that they are illegal because the voting power on stock is separated from the legal

ownership. As stated by Greenhood: "Any contract by which the owner of corporate stock deprives himself of the important rights which accrue from such ownership is void" (*Public Policy,* p. 502). The commentator states as a rule a proposition which cannot be maintained, and its fallibility is perhaps suggested by the fact that the only case cited in its support is that of *Fisher* v. *Bush* (*cf.* p. 158); although sufficient opinions, or dicta, may be cited both for and against the proposition, as, on one hand, *Bache* v. *Central Leather Co.* (78 N. J. Eq. 484, 81 Atl. 571; 1911), in which the court said that a contract for the separation of the voting power from the ownership was "a gross violation of the public policy of this state."

In *Robotham* v. *Prudential Insurance Co.* (64 N. J. Eq. 673, 53 Atl. 842; 1903) it was suggested that the great defect was in the severance of the voting power from the beneficial ownership, and several cases were cited, in none or few of which was that element the controlling factor.

Stated otherwise, it is said to be the "universal policy" of the law "that the control of the stock shall be and remain with the owners of the stock. The right to vote is an incident of the ownership of the stock and cannot exist apart from it." (*Griffith* v. *Jewett,* 15 Week. Law Bull. 419; 1886.)

It is to be noted, however, that in the typical voting trust the legal title is vested in the trustees who have also the voting power, and that the so-called equitable owners are merely in the position of beneficiaries of a

specific trust and have not, and may not be entitled to, any of the incidents of legal ownership. The objection as usually made thus has little weight. It might have weight in those instances, if in any, in which the voting power of the trustees is subject in some degree to instructions from their certificate holders, for in those instances it might be argued that the legal owners should exercise completely and exclusively the voting power, although the restriction arises from contract and not from any qualification of their legal title. The criticism has not, however, been judicially directed to those instances, probably for the reason that the courts are willing to attribute as many rights as possible to the certificate holders and therefore do not disapprove any contractual arrangement by which the powers of the certificate holders or "equitable owners" are increased. In brief, the criticism has been expressed in cases to which it is not applicable, and has been overlooked in considering cases to which, if to any, it might be deemed applicable.

There is, indeed, some superficial inconsistency in vesting the legal title in trustees and at the same time permitting them to exercise exclusively the rights incident to legal ownership only through a breach of their trust. This limitation, however, seems to be justifiable on the ground, as already suggested, that there is nothing fundamentally improper in allowing the beneficiaries of the trust some voice in the manner of its administration or in providing by contract that the beneficiaries may to some extent be enabled to instruct their trustees.

Clarity by the draftsman may reduce the possibility

of legal discussion. It is not quite accurate to state that "the full legal and equitable title" to the stock has been "assigned and transferred to the Voting Trustees." (New National Oil Company.) Nor is it exact to refer to the voting trustees as agents of the *cestuis que trustent.* (Republic Motor Truck Company.) And the recital in a trust certificate that the holder is the owner of the specified shares may strengthen the view that a certificate holder is, at least for some purposes, analagous to a stockholder (*State Tax Commission* v. *County Commissioners,* 138 Md. 668, 114 Atl. 717; 1921).

It has been suggested (10 *Harvard Law Rev.* 428) that if a stockholder may sell his rights to prospective dividends, he may quite as legitimately sell the right to vote which is similarly incidental to his stock, although the writer does not there base his approval of voting trusts on any such narrow ground. And Justice Swayze, in *Warren* v. *Pim* (*supra*), spoke of the right to vote as "a property right and a very valuable right." On the other hand, the sale of a stockholder's right to vote has been treated as analogous to the sale by a citizen of his right to vote at the polls, and therefore illegal, as in *Hafer* v. *New York, Lake Erie and Western* (14 Weekly Law Bull. 68; 1886), and in *Sheppard* v. *Rockingham Power Co.* (150 N. C. 776, 64 S. E. 894; 1909); but obviously the franchise to vote is distinguishable from a contract right.

As to the separation of the voting power from the legal ownership, a significant case is that of *Elger* v. *Boyle* (126 N. Y. Supp. 946; 1910), in which a testator

directed that certain stock held by his testamentary trustees should be voted by them as directed by six persons named in the will. On the pertinent branch of the case Justice Bischoff's opinion is as follows: "I find no force in the contention that the trustees, as holders of the stock, cannot be controlled in their manner of voting. The power to vote stock incidental to ownership of the stock itself may not be taken from the holder *in invitum;* but he may certainly qualify his ownership by his own consent that another may vote for him, as in the familiar instance of a vote by proxy, or may accept the ownership with a condition which involves this consent, as here. These trustees become possessed of the stock, not as their own asset, but solely by virtue of the will and of the conditions which the will imposed. One condition involved their consent to a restriction of their voting power, and no rule of law or of public policy is offended by giving effect to that consent."

On the other hand, where a will directed that one of three executors should vote on certain stock and that the other executors should give him a proxy, which they refused to give, the vote of the single executor was rejected, as the legal title was in the three and a proxy to one of the three could not be created by will. "The right of voting stock is inseparable from the right of ownership. The one follows as a sequence from the other, and the right to vote cannot be separated from the ownership, without the consent of the legal owner" (*Tunis* v. *Hestonville, etc., R. R. Co.,* 149 Pa. 70, 24 Atl. 88; 1892).

And so a limitation on a bequest of shares that a person named as trustee, and for only this purpose, should have the power to vote, but not the power of disposition, or any other power, was held invalid. (*Randall* v. *Lucke,* 205 N. Y. Supp. 121; 1924.)

The separation of the voting power from the ownership of stock is perhaps deemed improper from a too high regard for the early history of corporations. The king's grant of a corporate charter was to his "trusty and well beloved" grantees, but the personal importance of the proprietors, perhaps even then somewhat fictitious, has no counterpart to-day in the relation to a secretary of state of the modern incorporators. The "trusty and well beloved" were supposed to vote in person, if at all; and only gradually were they enabled temporarily to grant the voting power to others as the proxy was imposed on the common law. The extension of the statutory recognition of the proxy has been followed by its quite universal introduction and its actual use in many cases by those having no relation to the stockholder except that created from time to time by the proxy. Under such circumstances the voting power is often even more blindly alienated than is possible under the terms of a voting trust.

In passing on the accuracy of the proposition that there may be a separation of voting power from the ownership of stock, attention should be called to the practice of denying, for instance, to one or more classes of stock any voting rights, a provision "which does not concern the public and does not violate any rule of the

common law or any rule of public policy" (*People* v. *Koenig,* 133 App. Div. 756, 118 N. Y. Supp. 136; 1909; *cf.*, *Millspaugh* v. *Cassedy,* 191 App. Div. 221, 181 N. Y. Supp. 276; 1920), as well as the instances in which corporations have issued stock deprived absolutely or conditionally of voting power (*e.g., General Investment Co.* v. *Bethlehem Steel Corp'n,* 87 N. J. Eq. 234, 100 Atl. 347; 1917), and those instances in which the voting power has been temporarily taken from outstanding stock, as at the time of the dissolution of the so-called "powder trust" (Stevens, *Industrial Combinations,* p. 463). And an instance of long standing appears in the case of the International Silver Company, in which the preferred stock has one vote per share while the common has one vote for each two shares.

The critics of non-voting stock and of no par value stock direct their complaints to the corporate managers rather than to the legislatures, as when such are used it is with statutory warrant. In brief, the stockholder who buys stock with such legal limitations has no valid complaint. Similarly, where the statutes permit "management stock" the objections verge on the ethical rather than the legal. The possibilities in the situation are illustrated by the litigation in the Goodyear Tire and Rubber Company. The comparatively slight amount of "management stock," having the exclusive voting power, was put in the control of three persons. The controversy related largely to the conduct of the concern by the holders of the "management stock" and their nominees, or perhaps their nominators.

Even assuming that the legal title to the stock remains in the original owners, an assumption which can be maintained only with some difficulty, nevertheless there is ample authority for the proposition that stockholders may transfer their voting powers to others by a contract enduring for a longer period than might a statutory proxy.

Whether a practice or an agreement is in conflict with public policy is doubtless to be determined by tests which may vary from time to time. Subject to such fluctuating tests must be considered, for instance, the proposition that only the real owner of stock, or his proxy, should vote upon it. Doubtless in the early history of corporations the implied agreement was understood to be that each stockholder should vote personally if at all, while voting by proxy was not recognized as a common law right and only later was introduced gradually by special provisions.

While one may not sell one's proxy (*e.g.*, N. Y., *Gen. Corp. Law,* sec. 23; *Penal Law,* sec. 668), there is no illegality in one's selling or disposing of one's stock, subject to its reacquisition on certain conditions, and permitting the vendee, assignee or holder as legal owner in the meantime to vote on the stock. If to permit this infringes public policy, it is questionable whether the practice is not so general, in one form or another, as really to evidence a change in public policy, and to require some qualification of decisions which have purported to express the public policy of an earlier period.

Bankers and brokers are to-day the record owners of large amounts of stock, holding them either assigned in

blank or not, the equitable title to which, either free or encumbered, rests in their clients or customers who permit the stock to be voted by those having its temporary possession and standing for convenience in their names as such record owners. In fact, it is probably true that at the stockholders' meetings of many large corporations much stock is thus improperly voted, according to the earlier tests. Yet it is difficult to define the public policy, if any, which is by this fact alone violated. There is no duty unfulfilled, for there is no obligation to vote. There is no duty improperly performed, for if the unregistered equitable owner attempted to vote his offer would under normal circumstances be declined. A stockholder cannot compel other stockholders to vote, if they do not choose to do so; and he cannot require a change in the registration in others' certificates to conform to what he believes to be the fact as to equitable ownership. And as regards the corporation, its registry of stockholders is ordinarily conclusive as to the identity of the owner of the stock.

A case in point arises from the common procedure of closing the transfer books of a corporation for a certain number of days prior to a stockholders' meeting, with the practical result that stockholders of record may vote at a stockholders' meeting who may have ceased to be actual stockholders by selling their stock prior to the meeting and after the closing of the transfer books. The effect of this practice, embodied in statute in a few states, was emphasized in the case of *Bache* v. *Central Leather Co.* (78 N. J. Eq. 484, 81 Atl. 571; 1911), by

the fact that the complainants owned stock, purchased after the books closed, on which of course they were unable to vote and which was in fact probably voted against them.

It has, however, often happened that stock standing in the name of a brokerage house, or its nominees, has been sold and no transfer made on the books, and that thereafter the registered owners, although having ceased to be or to represent actual owners, have given proxies on such "street stocks." This has, at least, made difficult the identification of the actual owners, and the problem was recently called to the attention of the New York Stock Exchange by Mr. Samuel Untermyer. Shortly thereafter the Governing Committee of the Exchange adopted a resolution forbidding the members to give proxies except in proper cases and not under the conditions suggested above (p. 172, *Com. & Fin. Chron.*, July 9, 1927).

An unusual episode in this connection was the official circular of the New Haven road (July 26, 1927), published as an advertisement, calling attention to the new rule of the New York Stock Exchange, stating that their records indicated (although how, is not disclosed) that a substantial number of their shares had been sold without being transferred, and urging the actual owners to have transfers completed before July 30th, in order that they might be qualified to vote at the special meeting on August 17th and also be entitled to subscribe for the proposed issue of preferred stock.

In connection with the same subject, attention may be called to the fact that in the past, as now, large

blocks of American stocks were so held abroad that the voting power was separated from what some would probably call the legal ownership. Thus, of large American issues earlier held in England, it was at one time estimated that probably less than five per cent. were registered in the names of the actual owners. As some of these stocks did not then pay dividends, it simply amounted at that time to an abandonment of the right to vote, the successive purchasers not troubling to have the stock properly transferred on the books of the companies. Later, as some of these stocks began to pay dividends, the obvious desirability of sending the certificates to this country for registration occasioned much inconvenience. In addition to this circumstance, it had even then been customary to send such American stocks abroad principally in ten share certificates, which, once endorsed in blank, were transferred repeatedly by delivery; but this practice was abandoned in England as the result of a holding that such certificates were not negotiable instruments (*e.g., London & County Banking Co.* v. *London & River Plate Bank,* 20 Q. B. D. 232; 1887).

This seems to have led to the adoption by the English of the practice, already known in Holland, by which large blocks of stock were registered in the name of some "administration," association or trust, which in turn issued its certificates (either of its own stock or of beneficial interest in the particular securities held by it) in smaller denominations and these latter served the purpose of local trading (*cf., e.g.,* 4 Rlwy. & Corp. L. J. 47; 5 *ibid.* 290). The individuals whose money was invested

in these American securities had no power of voting on the stock itself, and often had not even the power of stockholders in a holding company. It may be chiefly for reasons of practical convenience that this system continued to prevail, and yet, with such complete separation of voting power from the equitable interest, it is quite as obnoxious to the earlier "public policy" as any voting trust. Certain it is, in any event, that stock in large amounts and on frequent occasions has been voted by those who, although owners of record, have had no real interest in the stock itself, and in some instances have served merely as agents for the collection of dividends.

Likewise, for instance, a large amount of stock of an American corporation once stood in the name of a domestic trust company, against which stock the trust company issued its certificates of interest, for one share each, for distribution abroad. Mention should also be made of the unique arrangement in the voting trust of the Oregon Railroad and Navigation Company (August 19, 1896), by which the so-called equitable owner of the stock might be removed a further degree from the legal title. Under this agreement substantially all the stock was held by the Central Trust Company of New York, which issued the usual stock trust certificates. Then, as it was anticipated that these trust certificates would in some measure be held by residents of Massachusetts and Germany, it was provided that the owners might deposit their trust certificates with either the Old Colony Trust Company of Boston or the Deutsche

Treuhand-Gesellschaft of Berlin, and receive in return a trust certificate from one of these concerns, entitling the depositor to receive on its surrender, not a certificate of stock, but a corresponding trust certificate in the form issued by the Central Trust Company.

The converse of this appears in the procedure of issuing "New York shares" or "American shares," being really trust certificates representative of stocks of foreign corporations, as in the cases of the Royal Dutch Company, the Rand Mines and the De Beers Consolidated Mines. In each instance a trust company received the stock from a banking firm, as depositors, and issued against the stock its certificates of interest called "shares," although not numerically equivalent to the underlying shares. Thus, an "American share" of Rand Mines represented 2½ ordinary shares (of a par value of five shillings each) of the company.

These instances have not been deemed to offend the public policy of the time, but have rather emphasized the fact that in this regard the public policy of the law may weil be determined by the course of actual business requirements. In brief, however, it is to be borne in mind that in the typical voting trust there arises no question of any separation of voting power from ownership for the simple reason that the legal title to the stock is in the trustees, who have been recognized, for instance, as the "absolute owners of the stock." As was said in *Johnson* v. *Johnson; in re Selway* (198 Iowa 950, 200 N. W. 621; 1924): "The legal title was and is in the trustees."

As bearing on public policy, some weight may well be given to the action of the courts in what may be considered administrative decisions. In addition to the New Haven case (see page 10), the courts in 1923 in the Reading and the Lehigh Valley segregations provided for temporary trusts of certain stocks (and see *United States* v. *Reading Co.*, 273 Fed. 848; 1921). So also courts have approved reorganization plans with a voting trust as a routine matter (*e.g.*, Habirshaw Electric Cable) as well as in cases of very substantial importance (*e.g.*, Chicago, Milwaukee and St. Paul). And it would seem that in some instances the plans, including a voting trust, were prepared, if not initiated, by the court itself (*e.g.*, Kansas City Railway and Light; Missouri, Oklahoma and Gulf Railroad).

Aside from the specific statutes on the subject elsewhere referred to, the recognition of the general principle by the legislative branch is shown in the "State Control Acts" of Massachusetts (Spec. Acts, 1918, chaps. 159, 188), under which trustees, although owning no stock, were placed in control for ten years of the properties of the Boston Elevated Railway Company and the Bay State Street Railway Company.

The action of the executive branch of government is illustrated by the orders of various public service commissions, and by the concurrence of the Alien Property Custodian in the voting trust of the American Metal Company, Ltd., and particularly in that of the Chemical Foundation, of which latter it was said: "All the directors, officers, and voting trustees were chosen by or in

accordance with the direction of Mr. Palmer, given while he was Custodian" (*United States* v. *Chemical Foundation, Inc.*, 272 U. S. 1, 47 S. Ct. 1, 1926). The proposal to put the principal stockyards of the packers under a twenty year voting trust, with trustees to be appointed by the court, seems not to have been disapproved by the Department of Justice (*Rep. Att'y Gen.*, 1920, p. 38). The Banking Department of New York, notwithstanding its later attitude, once approved, and even insisted upon, a voting trust in a somewhat weakened bank and selected three prominent citizens as trustees (*Skinner* v. *Home Bank of Brooklyn,* 190 App. Div. 187; 1919; aff'd 230 N. Y. 631). The trust was established in 1908 for five years, but the bank was closed in 1910. The case cited was tried in 1918, and among the witnesses was one who for a period had been the special deputy superintendent in charge of the liquidation of the bank, and who indeed later, as Superintendent, announced the newly discovered policy of the Department as stated on pages 29, 41.

As bearing on the arguable proposition that there may properly be created a voting trust at common law, without reliance upon statutory recognition or authority, reference may perhaps properly be made to fact that the words, "the voting trust is created without the need of statutory license" (see page 162; as used also in the earlier edition), were quoted apparently with approval by the Appellate Division in *Tompers* v. *Bank of America, infra.* This theory seems to have been recognized in the Ohio statute of 1927 (General Corporation Act, sec. 34), which included this provision: "The rights conferred by this

section shall be in addition to rights at common law."

Courts have held voting trusts to be void, or have refused to enforce rights asserted under them, as they have done in the case of ordinary contracts, when the object or the consideration of the agreement has been illegal. This result has been reached for a variety of reasons. Thus in *Cone* v. *Russell* (48 N. J. Eq. 208, 21 Atl. 847; 1891), one of the parties secured proxy rights for a period of five years in all, which would give him control of the stock, for the consideration that he would cause such a board of directors to be elected as would employ one of the parties to the contract as manager for five years at a stipulated salary. If the object had been a proper one, and in any sense directed toward the advantage of the corporation or of its stockholders at large, the court would doubtless have approved the arrangement, as it recognized that "the propriety of the object validates the means." So, a pool of a majority interest in stock, for the purpose of insuring among the parties an agreed division of the places on the board, was held void and against public policy; and the court consistently declined to aid the plaintiff in enforcing rights alleged to have been violated by a breach of the agreement (*Bridgers* v. *Staton,* 150 N. C. 216, 63 S. E. 892; 1909). However, where the plaintiffs owned the entire stock of a corporation and sold a controlling interest to the defendants, a contract by which the parties agreed that the plaintiffs should retain their offices and salaries for five years was upheld, the court considering

that the purchase price might practically be paid in part by this method, particularly as the holders of the entire stock were parties to the agreement and "no one else could complain" (*Kantzler* v. *Bensinger,* 214 Ill. 589, 73 N. E. 874; 1905).

So, one stockholder may not sell his stock coupled with an agreement that the vendee be appointed to a certain office with a stated salary (*Fennessy* v. *Ross,* 5 App. Div. N. Y. 342; 1896; *Guernsey* v. *Cook,* 120 Mass. 501; 1876); nor may the holders of a majority of the stock agree in bad faith to control the board and raise their own salaries (*Snow* v. *Church,* 13 App. Div. N. Y. 108; 1897). The same result was reached where the principal object was to secure the control of a corporation, and while a contract for the purchase of stock for such a purpose may not be necessarily void, yet the court doubted whether "sound public policy" demanded that it should aid the parties to such a contract by a decree of specific performance (*Gage* v. *Fisher,* 5 N. D. 297, 65 N. W. 809; 1895).

A case of agreement for control is that of *Manson* v. *Curtis* (223 N. Y. 313, 119 N. E. 559; 1918), often cited in discussions of voting trusts, although indeed the alleged agreement was not in writing. The court said: "It does not constitute a voting trust agreement, because under it each party retains the voting power of the shares owned or to be owned by him." Likewise, in *Hellier* v. *Achorn* (255 Mass. 273, 151 N. E. 305; 1926) the agreement for control was not in writing, and the court followed the principle of *Brightman* v. *Bates, supra,* also

saying: "The contract in the case to be decided does not come within the principle of the voting trust agreements which have been held to be valid."

A peculiar offshoot of discussions of contracts for control appeared in *Groub* v. *Blish* (152 N. E. 609; Indiana, 1926). In that case stock was transferred to three depositaries, or trustees, under an agreement and twenty-year proxies. A minority depositor was not allowed to rescind, but as two of three depositaries owned a majority of the stock, the court held that the arrangement did not constitute a voting trust because in fact the majority of the depositaries did not have any greater control than was originally in their power. It is interesting to speculate as to what this court would have developed in the case of *Rossmassler* v. *Spielberger* (270 Pa. 30, 112 Atl. 876; 1921), in which instance all the voting trust certificates were, at the time the action was brought, owned by one person.

Illegality involving a restraint of trade was the basis of condemning the agreement in the Genesee Valley Canal Railroad Company (*Fisher* v. *Bush,* 35 Hun, 641; 1885), which was held to be "not such and so limited as to time and place as not to be condemned as against public policy." The agreement was also held void because not based on a real and special consideration, and also because of the "pernicious and unlawful provision" by which the parties agreed to vote in person and not by proxy. Had the technical details been adequately provided for, it would seem that the agreement might have been upheld, as its express purpose was to

prevent a sale of the company's franchise by a majority of the directors who represented only a minority of the stock. The element of restraint of trade may naturally figure also in those voting trusts whose effect is to subject one corporation to the control of another, as in the Cincinnati, Hamilton and Dayton cases, and also in such trusts as that of the Standard Oil, and this element alone might render probable the overthrow of such a trust. Thus, in *Hafer* v. *New York, Lake Erie and Western* (14 Weekly Law Bull. 68; 1886) the fundamental objection was raised that the trust had the effect of putting the company into the control of the Erie, which was alleged to be beyond the legal power of the Erie, and that the stockholders improperly attempted "to confer their rights to vote upon the directors of another company."

So also, if the trust agreement is interpreted as creating an illegal restraint on the power of alienation it will not be enforced. Thus where the stock was absolutely tied up, although only for six months, it was held that the agreement, "if not void as being contrary to the statute, is certainly unenforceable as against public policy" (*Williams* v. *Montgomery,* 68 Hun. N. Y. 416; 1893). The court continued: "Persons cannot agree to surrender the control and ownership of property belonging to them for a definite period, and enforce such an agreement in any court of justice." A similar result was reached in *Sullivan* v. *Parkes* (69 App. Div. N. Y. 221; 1902), where the possible duration of absolute inalienability was fifteen years. But the decision in *Williams* v.

Montgomery was later modified (148 N. Y. 519; 1896), and under the facts it was found that there was no unlawful suspension, and the rule on the subject was there quite clearly stated, as follows: "Where there are living parties who have unitedly the entire right of ownership, the statute has no application. . . . The ownership is absolute whether the power to sell resides in one individual or in several. If there is a present right to dispose of the entire interest, even if its exercise depends upon the consent of many persons, there is no unlawful suspension of the power of alienation. The ownership, although divided, continues absolute."

In the case of *Moses* v. *Scott* (84 Ala. 608; 1887), the stock had been subjected to a three-year trust, each party also giving to the other parties a refusal on the stock. One of the parties sold his stock, and the vendee sought to vote on it. The other parties sought an injunction restraining the vendee from voting, but the court held that it would not aid the enforcement of the contract, as it was a "palpable restraint on the alienation of property," although the court admitted that there was nothing *per se* illegal in the arrangement since it was possibly not so binding as to prevent a withdrawal of deposited stock; in other words, it was treated really as a case like those decided on the theory of a revocable proxy.

The stock trust of 1877 as to the Pittsburg and Lake Erie Railroad, being expressed in terms to give the trustees a perpetual control of the voting power, was held by the court to be against public policy as depriving the owner of his voting rights; the court assuring the

result desired by the plaintiff by holding that, if the position stated was wrong, the agreement at most constituted only a revocable proxy (*Vanderbilt* v. *Bennett,* 2 Rlwy. & Corp. L. J. 409; 1887). The case naturally afforded a better basis of attack on the ground of effecting a perpetual restraint on the power of alienation. The voting trust in the Wisconsin Central Company was submitted to a high authority on perpetuities and held to be free from objections on the ground of remoteness (Purdy's Beach, *Corporations,* 1905 ed., vol. 2, p. 1039).

Restraint on competition (*Clarke* v. *Central R. R. & B. Co.,* 50 Fed. 338; 1892) and an agreement for secret profits (*Shepaug Voting Trust Cases,* 60 Conn. 553, 24 Atl. 32; 1890), have also been reasons for not upholding a voting trust. And so indefiniteness of duration was an insuperable objection in *Morel* v. *Hoge* (130 Ga. 625, 61 S. E. 487; 1908), the agreement in which, between two groups of stockholders, gave to one group owning exactly one-half of the stock the right to name indefinitely a majority of the board. The contract was held to be against public policy, and as one of the group in power sold some of the stock, the agreement was thereafter held unenforceable because it was designed indefinitely to deprive the owners of a majority of the stock from controlling the corporation.

The opinion in *Morel* v. *Hoge* was quoted at length, and adopted, in *English* v. *Rosenkrantz* (152 Ga. 726, 111 S. E. 198; 1922), but in *Simmons* v. *Atlanta Telephone and Telegraph Co.* (139 Ga. 488, 77 S. E. 377; 1913) it was intimated that the earlier case might not

be followed, as in this instance the agreement was limited as to time and indeed would expire when a specified debt should be paid. Indefiniteness, not of duration but of the material terms of the trust, was apparently a sufficient reason, if others had not been advanced, for setting aside the trust in *Warren* v. *Pim* (*supra*).

Perhaps the most elusive objection to the enforceability of voting trusts is that which rests on the theory that such a trust is nothing more than a collective proxy, and revocable as is any proxy. If this theory were correct, the many statutes limiting the effective duration of a proxy would also operate to render totally ineffective a voting trust, for while less than half the states prescribe a limit for the life of a proxy yet that limit varies from seven years to as short a period as thirty days. Those who suggest an analogy between a proxy and a voting trust agreement ignore certain fundamental differences between them. The usual proxy merely establishes a relation of principal and agent terminable by the principal at will either through revocation or through sale of his stock. The voting trust agreement vests in the trustees an interest in the stock which the original owner obviously is unable to nullify by any sale of stock and which he cannot otherwise cancel except through an attempted breach of contract. The holder of a proxy has no control over the stock itself, while the voting trustees have the possession of the stock as well as the legal title to it. The proxy creates a relation of a temporary character under a restrictive statutory authority; the voting trust is created without the need of statutory

license and confers not a revocable authority upon an agent but a qualified title upon a transferee of property.

The preceding paragraph, originally written at a time when there had been no judicial consideration of the precise point, was quoted in full as "the rule governing such cases" in the opinion on appeal in *Tompers* v. *Bank of America.* (217 App. Div. 691, 217 N. Y. Supp. 67, 1926.) The facts of that case caused the question to be presented squarely. A statute of New York, (Gen. Corp. Law, sec. 26), which however antedated by nine years the New York statute permitting voting trusts, provided that neither an officer nor certain specified employes should act as proxy for stockholders of a banking corporation. It was properly said, in the opinion of the court below, that the word "officer" included a director. In the voting trust of the Bank of America the three trustees were directors of the bank and one was also its president and another a vice-president. The agreement named, as to each trustee, two successor trustees in line, and at one point it was suggested that if this objection were valid it might have been avoided, and the trust upheld so far as that objection was involved, by resignations producing an unobjectionable personnel of trustees. No such change was made. The trust was upheld, this being one of the two important questions raised in the litigation.

Reference may be made here to another feature of the Bank of America case in which a novel situation was presented. The voting trust agreement was dated

December 31, 1924. Effective March 12, 1925, the statute on voting trusts was amended by the addition of the words: "This section shall not apply to a banking corporation." On March 12, 1925, the voting trustees held 20,217 out of 65,000 shares; before the litigation commenced they held a majority. Two actions were brought; in one the plaintiff National Liberty Insurance Company held stock; in the other the plaintiff Tompers held voting trust certificates. Tompers had deposited some stock before March 12, 1925, and other stock after that date. The contention was advanced, and was upheld below, that further deposits could not be legally made after March 12, 1925. On appeal the court held that the amendment of 1925 could not be given a retroactive effect, that "it speaks of the future and does not interfere with a contract which was valid when made." Under the statute, both before and after this amendment, voting trustees were obliged to receive stock when offered to them, and regardless of whether the agreement provided, as in this case, that later deposits could be made. This portion of the statute would doubtless have been judicially amended if on this point the voting trust had not been finally upheld. Of course, as a practical matter, if the decision had been in effect that a certificate holder who deposited after March 12, 1925, could rescind, the trustees might naturally have been left with only a minority of the stock, and the control of the bank become subject to market operations. And indeed if sufficient stock and trust certificates have been, or should be, bought by those sharing the views of the plaintiffs, it is

clear that the voting trustees would represent only a minority interest until December 31, 1934.

In one instance the practical effect upon voting trusts of the statutes on proxies is interesting. In a very few states the statute limits the duration of a proxy unless a period of time is specified. But in California, even if such period is stated, it cannot exceed seven years. Thus this duration has been adopted for a so-called proxy agreement (Petaluma and Santa Rosa Railroad) and also for a voting trust (Key System Transit). However, it was after the decision in *Smith* v. *San Francisco and N. P. Ry. Co.* (see page 132), that the legislature enacted sec. 321b of the Civil Code, providing that proxies, even with a specified duration, may not exceed seven years and even so shall be revocable. In *Simpson* v. *Nielson,* 246 Pac. 342; California, 1926) the court held invalid a twelve year voting agreement, and said: "It is useless to discuss cases from other jurisdictions, when the question is plainly covered by our statutory law. There is no uncertainty or ambiguity in the section of the Code cited. A proxy given for a term in excess of 7 years is invalid, and one for any term is revocable at the pleasure of the stockholder. Cases involving voting trust agreements likewise have no application here." However, in alluding to the policy of the state, the courts seem to pay no attention to the statute (Laws of 1919, ch. 79, Civil Code, sec. 321c) which specifically authorizes voting trust agreements, "for a definite period of time stated therein," in the case of corporations "organized for the purpose of marketing agricultural products."

To permit the disruption of a voting trust on the ground that it constitutes only a revocable power has been readily possible in those instances in which the agreement has been held to constitute a "dry" trust (*e.g., Commonwealth* v. *Roydhouse,* 233 Pa. 234, 82 Atl. 74; 1911); and in some cases in which the agreement has been sustained it has, nevertheless, been held that the agreement was revocable to the extent that any depositor might withdraw his stock (*Woodruff* v. *Dubuque and Sioux City R. R. Co.,* 19 Abb. N. C. 437; 1887; *Moses* v. *Scott,* 84 Ala. 608; 1887). In the usual case, however, this theory is not to be deemed properly available for the purpose of overthrowing such a trust.

The "active" feature of the trust may be emphasized, and the element of legal consideration adequately founded, by showing that the trust is for the benefit of others as well as of the depositing stockholders. Thus, in one instance, the company planned to issue $10,000,000 bonds and the trust agreement recited that "to induce bankers to purchase said bonds it is found necessary for the protection of their interests that a majority of the capital stock of the company be deposited with the voting trustees for a period of five years; . . ." (Philadelphia Record Transit).

For instance, in the voting trust of common stock considered in *Mackin* v. *Nicollet Hotel, Inc.* (10 Fed., 2d, 375; 1926), the bonds and preferred stock were sold with notice of, and in reliance on, the voting trust, which was to continue until all the bonds were paid, and the mortgage contained suitable recitals as to the voting trust.

And so, if such course be found necessary in order to secure a loan, the stockholders may "vest the management of the corporation in hands satisfactory to the lenders and for a term commensurate with the loan," without violating public policy, as intimated by Justice Swayze in *Warren* v. *Pim* (*supra*).

It has been said that the "only purpose regarded as lawful by the courts is the protection of the security of the lien holders" (36 *Amer. Law Rev.* 222). The absence of this element was not the reason for the condemnation of the trust in any of the cases cited by the writer, and it may well be questioned whether to-day the courts would insist on this narrow doctrine in order to uphold a trust as "active." This detail was, however, adverted to in the litigation over the Philadelphia and Reading trust of 1887, the court stating that the voting trustees represented "not only the shareholders, but also the other creditors" (*Shelmerdine* v. *Welsh,* 7 Rlwy. & Corp. L. J. 87; 1890), and it is obvious that many voting trusts have been created primarily in the interest of security holders. In the early trusts the trustees, to be sure, did little else than vote for directors, and the terms of the trust were correspondingly brief and indeed incomplete; so that in not a few instances the arrangement might well have been held to constitute technically an inactive trust. Reorganization agreements now usually set forth the facts of the situation plainly enough to indicate that the proposed trust is such as to be an "active" trust, although these details are often inadvertently omitted from the recitals of the trust agreement itself. As a matter of fact the

trust is frequently for the benefit of security holders, whether so expressed or not, and as well is generally for the benefit of all stockholders; and there should seldom be any difficulty in so framing the agreement as to obviate any objection on the ground that it creates merely a "dry" trust.

There is doubtless the element of an active trust present when the voting trustees represent creditors. In the case of the New Home Sewing Machine Company about ninety-five per cent. of the stock was transferred to three voting trustees, each of whom admittedly represented a creditor bank, and all of whom together constituted a majority of the company's executive committee. The banks made further advances, and naturally the feature of dual representation was emphasized in litigation, the court holding that the transactions between the company thus controlled and the banks thus represented were fair (*Irving Bank-Columbia Trust Company* v. *Stoddard,* 292 Fed. 815; 1923). A somewhat similar problem arose in *Bullivant* v. *First National Bank,* 246 Mass. 324, 141 N. E. 41; 1923), a majority of the voting stock of the Northwestern Leather Company being transferred to the bank, with broad powers subject to the advice of a majority of three persons named. The bank, also a creditor of the company, acting strictly in accordance with its defined powers, approved a reorganization plan; and the court held that there was no unfairness nor any attempt to further its own interests as a creditor to the detriment of others. As to the voting trust agreement, the court said: "It has not been and hardly could

be contended that the voting trust was not binding upon the parties to it." Naturally a voting trustee may not deal in his own interest with a holder of a trust certificate without full disclosure (*Bray* v. *Jones,* 190 Wis. 578, 209 N. W. 675; 1926). And for an instance of a creditors' committee of five being made voting trustees, for five years, see *in re C. W. Bartleson Co.* (275 Fed. 390; 1920).

Another objection has been at times raised with respect to the insufficiency of consideration underlying the agreement. The mutual promises of the depositors have been deemed by some not to constitute an effective consideration, while others, probably with more technical accuracy, have held such to be a valid form of consideration. In any event, while this question is one of the general law of contracts and not peculiar to the law of voting trusts, it is quite common to find in a voting trust agreement some consideration, either express or implied, other than the mutual promises of the depositors or their concurrent action in actually transferring their stock.

The legality of voting trusts of stock of corporations organized under general corporation laws may well be questioned if their terms contravene the principles already suggested, although if the attack is based on the more indefinite ground of public policy some security may be gained by including, and having accepted by the authorities, appropriate provisions in the company's certificate of incorporation, as in the cases of the New York, Lake Erie and Western and the Consumers' Gas Trust (*cf.* page 77). The example might also be followed of the Distillers Securities Corporation, the charter of

which provided: "The holders of all or any part of the shares of the capital stock of the corporation shall have the right from time to time at their discretion to create and form a voting trust." Such a provision might effectively estop any stockholder from opposing a voting trust, unless indeed the trust agreement were voidable on specific grounds other than the mere creation of such a trust. The certificates of incorporation of the Allis-Chalmers Manufacturing Company and the National Distillers Products Corporation referred to the possibility of a voting trust, and that of the Worthington Pump and Machinery Company did so by inference. The certificate of incorporation of the Crown Willamette Paper Company specifically permitted a voting trust; and the by-laws of the Denver and Rio Grande Western Railroad Company referred to the existing stock trust agreement by date and parties, incorporated quotations from it, and recited that all the stockholders "shall be deemed to have assented" to its terms. But in the case of the Burley tobacco pool such a step without the consent of the stockholders was held ineffective (*Lebus* v. *Stansifer,* 154 K'y 444, 157 S. W. 727; 1913). The detail is not without significance, as in *White* v. *Thomas Inflatable Tire Co.* (52 N. J. Eq. 178, 28 Atl. 75; 1893), the absence from the certificate of incorporation and by-laws of any reference to the preliminary agreement for a trust was apparently a reason for holding that the terms of the trust were not binding on those who had later without notice of it purchased shares of stock.

Likewise, in the case of corporations created by special

legislative acts any discussion of legality may well be limited if not altogether avoided. Thus in the instance of the Southern Railway the Act of the Virginia legislature (February 20, 1894) authorizing the organization of a corporation by the purchasers of the mortgaged property of the Richmond and Danville Railroad Company, provided that the stock of the new corporation should have "such preferences, conditions and voting power as shall be provided in said plan of organization. . . ." A subsequent Act of the legislature (January 23, 1900) specifically recognized the existence of the voting trust, mentioned the voting trustees by name, and authorized certain action by them in connection with a reduction of the company's common stock. The court, when discussing the public policy of Virginia in the case of *Carnegie Trust Co.* v. *Security Life Ins. Co.* (111 Va. 1, 68 S. E. 412; 1910), although it upheld the trust then under discussion, apparently was unaware of the action taken by the Virginia legislature on this subject in connection with the formation of the Southern Railway.

If a voting trust should be so formed as not to include the entire issue of stock, the inference is of course permissible that the trustees will act only for their beneficiaries and that they may, consequently, act not in the interest of other stockholders and so not for the common interest of all. Thus a trust presumably for the benefit of all the stockholders, but from which certain stockholders are excluded, may be subject to criticism. The trust agreement should not be in such terms as to be for the benefit of certain stockholders to the exclusion of

others (*Kreissl* v. *Distilling Co.*, 61 N. J. Eq. 5, 47 Atl. 471; 1900). Such an objection, that a voting trust of less than the entire outstanding stock may produce results prejudicial to the holders of the minority interest, has been met, voluntarily or in recognition of the statutes, in the later voting trust agreements by the specific provision that any stockholder might subject his shares to the trust. It may be observed that fair criticism cannot be directed to the mere existence of a voting trust, so much as to the improper use of powers conferred by it. Often, also, as already suggested, the minority holders not participating in a voting trust are in no worse position than are minorities in corporations all of whose stock is held directly by the stockholders.

The early opposition to voting trusts on the part both of courts and of writers has in fact gradually been modified. In attacking these trusts resort has been had to details which were not typical and which were obviously open to criticism, while the creation of such trusts with increasing frequency even at the present time indicates at least the rather prevalent belief of the bar in their propriety and also the widespread confidence of business men in their efficacy. The changed point of view was reflected by the court in *Carnegie Trust Co.* v. *Security Life Ins. Co.* (111 Va. 1, 68 S. E. 412; 1910), as follows: "In considering the cases, however, and the text writers who have commented upon them, it is impossible not to be impressed with the change of opinion which has taken place with respect to the true nature of such contracts. In the early stages of the development of this idea there

was a strong sentiment against them which found expression in the opinions of judges and in the not always temperate language of distinguished commentators upon the law; but experience has demonstrated their usefulness, and the hostility evinced toward them has by degrees diminished."

And in *Tompers* v. *Bank of America* (*supra*) Justice Martin remarked: "At Special Term it was said the agreement is against public policy; reference being made to certain cases, including the *Shepaug Voting Trust Cases*, 60 Conn. 553, 24 Atl., 32 (1890), and *Cone* v. *Russell*, 48 N. J. Eq. 208, 21 Atl., 847 (1891). When these cases were decided, ideas as to corporations and trusts were radically different from what they are to-day. Many old theories have been discarded."

Decisions adverse to voting trusts have frequently, and naturally, been cited as authorities for broader propositions than they really represent. Thus, *White* v. *Thomas Inflatable Tire Co.* (52 N. J. Eq. 178, 28 Atl. 75; 1893) represented a quite abnormal instance. Of the authorized capital of 100,000 shares, 83,000 shares were issued and were, except qualifying shares, subjected to the trust agreement. The arrangement was that Thomas, who had turned in 55,000 shares, should have the right to nominate one less than a majority of the board, while the other parties, who turned in 28,000 shares, should have the right to nominate a majority of the board. Subsequently, the plaintiff Bidwell bought from Thomas trust certificates representing 53,000 shares, and yet did not secure the control of the board under

the agreement, although the material terms of the agreement did not appear either in the certificate of incorporation or by-laws or stock certificates of the company or in the form of the trust certificates. Thomas claimed that he still retained the right to nominate a minority of the board, but this claim was not upheld, as it was assumed that the trust certificates were negotiable and that the plaintiff had succeeded to the rights of Thomas; and accordingly the trustees were enjoined from voting as directed by Thomas. Furthermore, the company had sold the 17,000 shares in the treasury to the plaintiffs, Bidwell taking 16,995 of these shares, and (the directors at this time being apparently the same as those who had joined in the trust agreement) it was held that the issue of this stock effected an abandonment, by those participating in the issue, of any rights under the trust agreement; and also, this stock having been purchased without notice of the trust, that the purchasers were entitled to assume that all the stock stood on the same basis and that a majority of the stock was entitled to elect the board of directors. Had those affected been simply the original parties to the agreement the court saw "no difficulty in holding such contract valid and its enforcement proper and practicable. I see nothing in it contrary to public policy." But as soon as the rights of third parties, not affected with notice of the extraordinary agreement, intervened (*cf. Gray* v. *Bloomington & Normal Ry. Co.*, 120 Ill. App. 159; 1905), the legal situation was materially altered, and the court naturally did not, and probably could not, look with favor on an agreement which was directed to conferring on certain stockholders, and

perhaps secretly, rights which were to be improperly withheld from other stockholders.

So, cases upholding voting trusts have been cited rather too broadly than the facts have been warranted. Thus, in the case of *Chapman* v. *Bates* (60 N. J. Eq. 17, 47 Atl., 638; 1900) the collective proxies and powers of attorney were not really upheld because the instruments constituted a valid voting trust but on the theory that as the defendants had advanced funds for the benefit of the company and otherwise changed their position in reliance on the powers of attorney, it would have been inequitable to set aside the proxies without restoring the defendants to their original position. It is also to be noted that the proxies were all to expire January 1, 1902, and that the plaintiff's proxy was signed July 6, 1899, and thus was within the statute permitting proxies for a period of three years. The proxy was also obviously "in the nature of a power coupled with an interest," as in *Smith* v. *S. F. & N. P. Ry. Co.* (115 Cal. 584, 47 Pac. 582; 1897) and so not subject to revocation at will.

Allusions may be made to a few decisions on collateral points, as the discretionary power of voting trustees (*Haines* v. *Kinderhook & Hudson Ry. Co.*, 33 App. Div., N. Y., 154; 1898); the liability of trust certificates to tax as evidence of indebtedness (*Commonwealth* v. *Union Traction Co.*, 192 Pa. 507, 43 Atl, 1010; 1899); and the impropriety of asking the bankruptcy court to compel dissenting creditors of a bankrupt corporation to accept voting trust certificates in a new corporation (*in re Northampton Portland Cement Co.*, 185 Fed. 542; 1911).

Perhaps chiefly because of the location in New York

of the transfer agencies of many corporations, there has arisen some litigation there as to the taxability of transfers of stock to and by voting trustees. The reasons why such transfers are taxable are sufficiently discussed in *Travis* v. *Ann Arbor Co.* (180 App. Div. 799, 168 N. Y. Supp. 53; 1917) and in *Chicago Great Western Railroad Co.* v. *State* (197 App. Div. 742, 189 N. Y. Supp. 457; 1921; affirmed without opinion, 233 N. Y. 661; 1922). But if the transfer is pursuant to a power of direction vested in others than the record holders, there may be a tax only on the entire transaction and not on each of two successive transfers involved (*Hudson and Manhattan Railroad Co.* v. *State,* 227 N. Y. 233, 125 N. E. 202, 1919). A transfer of stock to a committee under a deposit agreement is not taxable, if the committee are merely agents of the depositors (*International Paper Co.* v. *State,* 210 App. Div. 353; 206 N. Y. Supp. 57; 1924; affirmed without opinion, 241 N. Y. 535; 1925), although two of the five members of the court held that a voting trust was intended and created by the deposit agreement. And as to the liability to the federal transfer tax of transfers of stock to voting trustees, see *Goodyear Tire and Rubber Co.* v. *United States* (273 U. S. 100, 47 S. Ct. 263; 1927).

The procedure under the present state of the law in this regard is well illustrated by the notices (July 12, July 30, 1927) of termination of the series of three voting trust agreements of the Goodyear Tire and Rubber Company. Three situations were covered by the formal notices. If a registered holder of a trust certificate

requested the released stock to be issued in his own name, federal stamps of two cents a share were required. If a registered holder of a trust certificate requested the released stock to be issued registered in some other name federal stamps of four cents a share were required. If an owner, not a registered holder, of a trust certificate requested the released stock to be issued registered in a name other than his own federal stamps of six cents a share were required. And as to surrenders for exchange in New York there were also required the same corresponding amounts in New York transfer tax stamps.

With respect to the possible analogy between voting trust certificates and stock certificates (see page 52), the few expressions by the courts are significant. In *U. S. Indep. Tel. Co.* v. *O'Grady,* (75 N. J. Eq. 301, 71 Atl. 1040; 1909) it was held that the holder of a voting trust certificate was entitled to file a bill as a stockholder for a receiver of the company, the court remarking that "the owners of the certificates issued by those trustees are the real and substantial owners of the shares." This decision was followed in Delaware, where the court said that if a trust certificate holder had the rights of a stockholder except to vote (which in itself was hardly a correct statement) he was subject to the liabilities of a stockholder to creditors. Hence a creditor might maintain a claim, based on stock not fully paid, against trust certificate holders as though they were actually stockholders. The court said: "All to whom the voting trust certificates were issued are for the purpose of this proceeding liable as though shares of common stock to which they were

entitled under the terms of the trust were actually issued to them and stood in their names." (*John W. Cooney Co.* v. *Arlington Hotel Co.,* 11 Del. Ch. 286, 101 Atl. 879; 1917). The view of the court on this point was not altered on appeal (*Du Pont* v. *Ball,* 11 Del. Ch. 430, 106 Atl. 39; 1918; and see *Wallace* v. *Weinstein,* 257 Fed. 625; 1919).

On the other hand, also in 1917, the opposite result was reached in the United States Circuit Court of Appeals for the Eighth Circuit. The claim similarly was against holders of trust certificates, to establish liability with respect to stock not fully paid. The Court said:

"Appellees did not purchase shares of stock. They purchased in the open market at the city of New York, in connection with the purchase of their bonds, certain voting trust certificates, issued by voting trustees and the Trust Company, wherein it was recited that in 10 years the holder of the voting trust certificate would be entitled to receive fully paid up shares in the corporation to the amount represented by the trust certificate; that in the meantime the holder of the trust certificate should be entitled to receive payments equal to the dividends, if any, collected by the voting trustees. The names of appellees never appeared upon the books of the corporation as stockholders, and the corporation never treated them as stockholders. (*Clark* v. *Johnson,* 245 Fed. 442; 1917).

In the case of *Groub* v. *Blish* (152 N. E. 609; Indiana, 1926) the court said that when the depositor "sold, signed and transferred to the depositaries her shares of

the capital stock and executed a proper written assignment thereof, she was no longer a stockholder."

In Maryland it has been held that a trust certificate holder might be deemed a stockholder, and his residence taken to control in determining the local jurisdiction in which the shares would be listed for taxation, the court saying: "Other reasons might be given, but the fundamental one on which we rely is that, as between such a trustee and the stockholders who unite in naming him in the voting trust, the stockholder should be regarded and treated, for the purpose of taxation, as the owner, and his residence should determine the situs of his shares of stock." (*State Tax Commission* v. *County Commissioners,* 138 Md. 668; 114 Atl. 717; 1921).

Bearing upon the same subject is the decision in *Union Trust Company* v. *Oliver* (214 N. Y. 517; 108 N. E. 809; 1915) to the effect that, with respect to negotiability when used as collateral, stock trust certificates are substantially like stock certificates. The court referred to *Goodwin* v. *Robarts,* (L. R., 1 App. Gas. 476), a case of Russian government loan scrip there held analogous to a bond and negotiable, and continued: "The voting trust certificate in the present case resembles the scrip in the case recited; and the law applicable to a transfer of the shares of stock which it represented applies to a transfer of the voting trust certificate itself."

The court also said: "The representative of the Union Trust Company, however, who negotiated the loan with Clarke, referring to the certificate, testified: 'The stock is negotiable like thousands of transactions. . . . The

stock is absolutely negotiable stock.' By this he evidently meant that such certificates were treated in financial circles precisely like ordinary certificates of stock indorsed in blank."

This case was followed in *Garvan* v. *Certain Shares* of *International Agricultural Corporation* (276 Fed. 206; 1921), where the court said: "The certificates of voting trustees of corporate shares, representing the beneficial interest in these shares, are for practical purposes similar to certificates of the shares of stock. The obligations of the voting trustees in respect to the recognition of the transferees is no different from the obligation of the corporation itself in respect to transferees of stock certificates. *Union Trust Co.* v. *Oliver,* 214 N. Y. 517, 108 N. E. 809." The Circuit Court of Appeals took the same view (*Miller* v. *Kaliwerke,* 283 Fed. 746; 1922); and both of these decisions by the federal courts were cited with approval, although on another point, in *Great Northern Railway Co.* v. *Sutherland* (273 U. S. 182, 47 S. Ct. 315; 1927).

The cases referred to will serve as a guide to the literature of the subject, and more extended comment upon them is unnecessary for the present purpose, which is chiefly a statement of the principal questions raised by controversies over voting trusts. To this end a minute discussion of the various details involved in the technical arguments is not necessary and, except for those actually engaged in litigation on the subject, may not be desirable.

The few documents printed in the following pages will serve to illustrate portions of the foregoing discussion.

They are not, however, attached as examples to be followed under other conditions, for the reason that few instruments of such special character can be safely or appropriately adopted in circumstances apparently similar but inherently different.

IV

STATUTES

New York, Laws of 1925, ch. 120, amending sec. 50 of the Stock Corporation Law.

Sec. 50. Voting Trust Agreement. A stockholder, by agreement in writing, may transfer his stock to a voting trustee or trustees for the purpose of conferring the right to vote thereon for a period not exceeding ten years upon the terms and conditions therein stated. Every other stockholder may transfer his stock to the same trustee or trustees and thereupon shall be a party to such agreement. The certificates of stock so transferred shall be surrendered and cancelled and new certificates therefor issued to such trustee or trustees in which it shall appear that they are issued pursuant to such agreement, and in the entry of such ownership in the proper books of such corporation that fact shall also be noted, and thereupon such trustee or trustees may vote upon the stock so transferred during the term of such agreement. A duplicate of every such agreement shall be filed in the office of the corporation and at all times during business hours be open to inspection by any stockholder or his attorney. This section shall not apply to a banking corporation.

DELAWARE, Laws of 1925, ch. 112, amending sec. 18 of ch. 65 of Rev. Code by adding:

One or more stockholders may, by agreement in writing, deposit capital stock with or transfer capital stock to any person or persons, or corporations authorized by their charter to act as Trustee, for the purpose of vesting in said person, persons or corporations the right to vote thereon, or for such other lawful purposes as may be agreed for any period of time determined by such agreement, not exceeding ten years, upon terms and conditions stated in such agreement, pursuant to which such person, persons or corporations shall act. After filing an unexecuted copy of such agreement in the principal office of the corporation in the State of Delaware, which copy shall be open to the inspection of any stockholder of the corporation or any depositor under said agreement daily during business hours, the certificates of stock so transferred shall be surrendered and cancelled, and new certificates therefor shall be issued to such transferee or transferees, who may be designated Voting Trustees, in which said new certificates it shall appear that they are issued pursuant to such agreement, and in the entry of such transferee or transferees as owners of such stock in the proper books of the issuing corporation that fact shall also be noted, and thereupon said transferee or transferees may vote upon the stock so transferred during the period in such agreement specified; stock standing in the name of such Voting Trustees may be voted either in person or by proxy, and, in voting said stock, such Voting Trustees shall incur no responsibility as stockholder,

Trustee, or otherwise, except for their own individual malfeasance. In any case where two or more persons are designated as Voting Trustees, and the right and method of voting any stock standing in their names at any meeting of the corporation are not fixed by the agreement appointing said Trustees, the right to vote said stock and the manner of voting the same at any such meeting shall be determined by a majority of said Trustees, or, if they be equally divided as to the right and manner of voting the same in any particular case, the vote of said stock in such case shall be divided equally among the Trustees.

OHIO, General Corporation Act, 1927, sec. 34.

Section 34. A shareholder or shareholders of any corporation of this state, by written agreement, may transfer certificates for shares of such corporation and may deposit such certificates, either within or without this state, with any natural person or persons, or with any corporations authorized to act as trustee, for the purpose and with the effect of vesting in such person, persons or corporations all or such of the voting, consenting or other rights in or in respect of the shares represented by such certificates or for such other lawful purposes as may be agreed, and upon such terms, provisions and conditions as may be stated in such written agreement, but such agreement shall not be made irrevocable for more than ten years.

Every such agreement respecting voting rights shall provide that any holder of shares of the class or classes

covered thereby may become a party thereto by transferring his shares to the trustees therein named and by complying with the terms, provisions and conditions of such agreement.

The certificates for shares so transferred shall be surrendered and cancelled and new certificates therefor issued to such trustee or trustees in such manner that it shall appear that they are issued pursuant to such agreement, and in the entry of such ownership in the proper books of such corporation that fact shall also be noted, and thereupon such trustee or trustees may vote upon the shares so transferred and exercise other rights, if any, subject to the terms, provisions and conditions of and during the term of such agreement and so long as such shares continue to be so registered.

A duplicate of every such agreement shall be filed in the office of the corporation, and shall be open to inspection by any shareholder.

The trustees shall issue or cause to be issued by their depositary or agent, voting trust or appropriate certificates registered in the name of the depositing shareholders which shall, unless otherwise stated on such certificates, be transferable in the same manner and with the same effect as certificates for shares under the provisions of the Uniform Stock Transfer Act and shall in all other respects be subject to the provisions of such act.

Any additional terms, provisions and conditions not repugnant to this section or to law, including provisions defining or limiting the liability of the trustees or their

depositary or agent, may be included in any such agreement.

Shares issued by a foreign corporation may be made the subject of an agreement under this section.

The rights conferred by this section shall be in addition to rights at common law.

V

VOTING TRUST AGREEMENTS

THE BANK OF AMERICA

AGREEMENT, dated the 31st day of December, 1924, between such owners and holders of stock of The Bank of America, a banking corporation organized and existing under the laws of the State of New York (such owners and holders being hereinafter called "Depositing Stockholders" and said Bank being hereinafter sometimes called "the Bank"), as shall become parties hereto, and the successive holders of Trust Certificates issued hereunder (hereinafter sometimes called "Certificate Holders"), parties to the first part, and Edward C. Delafield, Frederick E. Hasler and Edwin Thorne and their successors (hereinafter called "the Trustees"), parties of the second part.

Whereas, the Depositing Stockholders deem it for the best interests of themselves and of the Bank to unite the

voting power held by them as such stockholders and, to that end, to place said shares of stock in the hands of the Trustees as hereinafter provided; and

Whereas, the parties of the second part have consented to act as Trustees hereunder upon the terms and conditions hereinafter set forth:

Now, THEREFORE, this agreement witnesseth that, in consideration of the premises and of the mutual covenants, promises and undertakings herein contained, and to be kept and performed by the several parties hereto, and of the sum of One Dollar ($1.00) by each of the parties hereto to the other in hand paid, the receipt whereof is hereby acknowledged, the parties hereto, the Depositing Stockholders and the Certificate Holders acting severally and not jointly, have agreed, and do hereby agree, as follows:

1. Each stockholder of the Bank who shall become a party hereto by signing these presents agrees to deposit with the Trustees, or the agent or depositary duly authorized by them, the certificates representing his shares, with sufficient transfers thereof and any revenue stamps required for such transfer, and to receive or have delivered to his order, in exchange therefor, a certificate or certificates issued hereunder in the form hereinafter provided, which deposit shall continue for a period of ten years from the date of this Agreement, unless earlier terminated in the discretion of the Trustees as hereinafter provided; and that such shares shall be transferred upon the books of the Bank to the names of the Trustees. The

Trustees are hereby duly authorized and empowered to cause such transfers to be made, and they, their survivor and survivors, successor or successors in office, are hereby further fully authorized and empowered to make, or cause to be made, any further transfer of such shares which may become necessary through the occurrence of any change in the personnel of the Trustees or deemed advisable by the Trustees for any other reason.

During said period of ten years, the Trustees shall possess and be entitled to exercise all rights of every name and nature, including the right to vote, give any consent or otherwise act in their sole discretion, in respect of any and all shares deposited hereunder, and in respect of any shares which may be received by them in exchange therefor, it being, however, understood that the holders of the Trust Certificates to be issued by the Trustees shall be entitled to receive payments equal to the dividends, if any, collected by the Trustees upon the shares standing in their names, such payments to be made when and as received by the Trustees, but without interest, on the basis of the proportionate interests represented by the several Trust Certificates.

2. The Trustees agree with the Depositing Stockholders that they will cause to be issued to the several stockholders, in respect of all stock deposited hereunder, a Trust Certificate or Trust Certificates for a number of shares equal to the number deposited by such stockholders, and that each such certificate shall be substantially in the following form:

The Bank of America
Voting Trust Certificate

.....Shares

No.....

This certifies, that .....or his predecessor in interest has deposited ..... shares of the Capital Stock of The Bank of America of the par value of $100 each with the undersigned Trustees under and subject to the terms and conditions of an Agreement between stockholders of said Bank and the undersigned Voting Trustees, dated December 31, 1924, and terminating on December 31, 1934, unless earlier terminated by the Trustees in their discretion as provided in said Agreement, which Agreement is on file with the undersigned agent for the Trustees, and at the principal office of the said The Bank of America.

The registered holder hereof shall be entitled to receive payments equal to the cash dividends, if any, received by the undersigned Trustees upon shares of the capital stock of the Bank, as the same may be at any time constituted, corresponding to the number of such shares represented hereby. For all purposes of this Certificate and said Agreement, the term "The Bank of America" or "Bank" shall be deemed to include the corporation described in said Agreement as The Bank of America, and any Corporation which shall acquire a substantial part of its assets and its good will and/or succeed to its business whether by consolidation, merger or otherwise.

This Certificate and the interest represented hereby is transferable only on the books of the said Trustees, by surrender of this Certificate properly endorsed for trans-

fer by the registered holder in person or by duly authorized attorney and, until so transferred, said Trustees may treat the registered holder as the owner hereof for all purposes whatsoever.

This Certificate is issued subject to all the terms and conditions of the aforesaid Agreement between stockholders of the said Bank and said Trustees, and the holder hereof, whether a depositor under said Agreement or a successor in interest to any such depositor, by the acceptance hereof, becomes a party to said Agreement and is entitled to the benefits thereof with the same effect as though he had duly executed and delivered the same. No voting right passes by or under this Certificate, or by or under any agreement, express or implied, it being expressly stipulated that, until the termination of said Agreement, the Trustees shall possess and shall be entitled in their discretion, to exercise, in respect of any and all stock deposited hereunder and held by them, the right to vote thereon for every purpose, and give any consent which the owner thereof shall at any time be entitled to give.

This Certificate is not valid unless duly signed on behalf of the undersigned Trustees by their duly authorized agent.

In Witness Whereof, the undersigned Trustees have caused this Certificate to be signed on their behalf by their duly authorized agent this

Voting Trustees.

By .....

Their Agent.

By .....

3. From time to time, after this Agreement shall have become effective, any stockholder of the Bank may become a party hereto by depositing hereunder any certificate for fully paid shares of the capital stock of the Bank, duly endorsed for transfer to the Trustees, and accompanied by any required revenue stamps, and by accepting a Trust Certificate or Trust Certificates issued by the Trustees pursuant to the provisions hereof.

4. The Bank of New York and Trust Company (hereinafter called the "Agent") is hereby appointed Agent of the Trustees. As such Agent, it shall hold the share certificates deposited hereunder, subject to the order of the Trustees, and shall execute Trust Certificates on behalf of the Trustees, act as depositary of funds, act as transfer agent of the Trustees, keep suitable transfer books for the Trustees, and otherwise act as their agent under special instructions. The Trustees may at any time and in their discretion, and from time to time, on written notice to the Agent, revoke its authority as Agent, and may appoint another agent. They may also employ other or additional agents, or transfer agents, or registrars of the Trust Certificates. The Agent or any additional agent or any registrar shall, at all times, be protected in acting upon written instructions of the Trustees.

The Agent of the Trustees shall incur no liability as Depositary and Agent for the Trustees for anything done or permitted at the request or direction of the Trustees in the exercise of their powers under this Agreement, the stock deposited hereunder being intended to be wholly at the order and under the control of the Trustees, and

the Agent shall incur no liability whatsoever except for its own wilful misconduct or neglect. The Agent shall be protected in acting upon any notice, request, consent, assignment, power of attorney or other instrument believed by it to be genuine and to have been signed by the proper parties or party. The Agent shall be entitled to reasonable compensation for its services and to be paid all reasonable expenses, including counsel fees, associated with the performance thereof.

5. The Trustees and their Agent may, for all purposes, including payment of sums equal to dividends, treat the person in whose name any Trust Certificate stands upon their transfer books as the owner thereof, and shall not be affected by any notice to the contrary.

Trust Certificates may be transferred only in the manner therein stated. The Trustees may, from time to time, adopt rules and regulations concerning transfer of Trust Certificates and close their transfer books on such occasions and for such periods as they may deem advisable.

6. Any Trustee may, at any time, resign by delivering to the other Trustees his written resignation.

In the event of the death, resignation, inability or refusal to act of Edward C. Delafield as a Trustee, John Ross Delafield shall become a Trustee in his place, unless said John Ross Delafield shall then have died, shall be under some disability or shall refuse to act, in which case Archibald Douglas shall take the place of said Edward C. Delafield. If the said John Ross Delafield shall take the place of the said Edward C. Delafield, and shall in turn die, resign, become incapacitated or refuse to act, then

the said Archibald Douglas, if living and under no disability, shall take his place as Trustee.

In the event of the death, resignation, inability or refusal to act of Frederick E. Hasler as a Trustee, Allen Curtis shall become a Trustee in his place, unless said Allen Curtis shall then have died, shall be under some disability or shall refuse to act, in which case Samuel Thorne shall take the place of said Frederick E. Hasler. If the said Allen Curtis shall take the place of the said Frederick E. Hasler, and shall in turn die, resign, become incapacitated or refuse to act, then the said Samuel Thorne, if living, and under no disability, shall take his place as Trustee.

In the event of the death, resignation, inability or refusal to act of Edwin Thorne as a Trustee, David L. Luke shall become a Trustee in his place, unless said David L. Luke shall then have died, shall be under some disability or shall refuse to act, in which case R. Stuyvesant Pierrepont shall take the place of said Edwin Thorne. If the said David L. Luke shall take the place of the said Edwin Thorne, and shall in turn die, resign, become incapacitated or refuse to act, then the said R. Stuyvesant Pierrepont, if living and under no disability, shall take his place as Trustee.

In the event of a vacancy or vacancies occurring in the office of Trustee through the death, incapacity, resignation or refusal to act of an original Trustee and of a successor Trustee, as hereinbefore designated, the remaining Trustees or Trustee may appoint a successor trustee to fill such vacancy. Each such appointment shall be made by

a writing signed by such remaining Trustees or Trustee, an original of which shall be lodged with the Agent for the Trustees and with the Bank at its principal office.

The term "Trustees" as used herein and in the Trust Certificates shall apply to the parties of the second part herein named and their successors hereunder from time to time.

Notwithstanding any change in the Trustees, the Trustees for the time being may adopt and issue Trust Certificates in the names of the original Trustees.

7. In case the Bank shall determine to increase the amount of its outstanding Capital Stock, and such stock shall be offered to the stockholders for subscription, then and in such event, upon receiving from the holder of any Trust Certificate, within such time prior to the time limited for subscription and payment, as may be prescribed by the Trustees, a request to subscribe in his behalf, or on behalf of his nominee, and the funds required to pay for a stated amount of such additional stock (not in excess of the ratable amount subscribable in respect of the stock represented by such Trust Certificate), the Trustees will make such subscription and payment, and, upon receiving from the Bank a certificate or certificates for the stock so subscribed for, registered in the names of the Trustees, will issue a Trust Certificate or Trust Certificates in respect thereof to the holder of the Trust Certificate who shall have made such request, or to his nominee, as the case may be.

In case the Trustees shall receive any stock certificates of the Bank issued by way of dividend upon stock held

by them under this agreement or otherwise, the said Trustees shall hold such stock likewise subject to the terms of this agreement, and shall issue Trust Certificates representing such stock certificates to those entitled thereto.

8. Upon the deposit of any stock hereunder or upon the issuance or transfer of Trust Certificates, the Trustees may require the payment of such transfer or other taxes or governmental charges as shall be incident thereto.

On any distribution of cash or share certificates, the Trustees may deduct or require the payment by the holders of Trust Certificates of such transfer or other taxes or governmental charges as they may be advised by counsel to be necessary together with all sums due for expenses of the Trustees and their agents not otherwise paid. The Trustees shall in no event be under any duty to make payments save out of cash received from the Bank or the Certificate Holders.

9. Of the stock transferred hereunder sufficient shares may be withdrawn from time to time and released from the operation of this Agreement as may be required by law for the purpose of qualifying as a director of the Bank the holder of any Trust Certificate issued hereunder, which release shall be made only upon surrender by such holder of a Trust Certificate or Trust Certificates for the number of shares to be released; and upon such surrender, the Trustees shall cause to be transferred to such holder a certificate of stock of the Bank for the number of shares so released, provided, however, that each holder of Trust Certificates who shall surrender the same shall be a person nominated by the Trustees for election as, or

theretofore elected a director of the Bank. Whenever any such person shall, while this Agreement is in force, cease for any cause to be a director of the Bank, he, or his legal representatives, shall forthwith cause the shares held so to qualify him as such director to be retransferred to the Trustees, making all sufficient transfers, executing all instruments, and paying all taxes and other expenses necessary for that purpose, and shall accept in exchange for said stock Trust Certificates issued hereunder for the same number of shares.

In the event that the capital stock of the Bank shall be increased and the holder or holders of shares transferred to qualify directors, shall become entitled to subscribe to additional stock, such holder or holders shall, while this Agreement is in force, forthwith cause to be transferred to the Trustees any and all rights with respect to said shares so released to subscribe to such additional stock, making all sufficient transfers, executing all instruments and agreements and paying all taxes and other expenses necessary for that purpose, and the right of such holder or holders to subscribe to additional stock shall thereupon be limited as provided in clause 7 hereof.

10. The Trustees shall possess, and shall be entitled in their discretion to exercise, until the actual delivery by them of share certificates in exchange for trust certificates, all rights and powers of absolute owners of shares deposited hereunder, including the right to vote the same or consent with respect thereto either in person or by proxy for every purpose; it being expressly stipulated that no voting right or other right passes to others by or

under said Trust Certificates or by or under this Agreement, or by or under any agreement, express or implied. The rights and powers hereby granted to the Trustees shall include the right and power to vote and consent in respect to the increase or diminution of the amount of the capital or number of shares of the Bank; and the Trustees shall also have the right and power to vote for or consent to the acquisition of property by the Bank, or the sale or other disposal of property by it, or for the merger or consolidation of the Bank into or with any other institution or corporation with which it may be legally permitted to merge or consolidate, upon such terms as they deem advisable, and in connection with any such merger or consolidation to accept for deposit hereunder any shares in the resulting institution issued in lieu of or in exchange for the shares of the Bank held hereunder; or for the dissolution of the Bank; provided, however, that the enumeration herein of the particular powers shall not be construed to limit or exclude any powers which said the Trustees would otherwise have hereunder or be entitled to exercise as the absolute owners of the deposited stock.

11. The Trustees shall have full power from time to time and at any time to cause all stock held hereunder to be transferred into their own names or into the names of their nominees; but as holders of said stock they assume no liability as stockholders, their interest hereunder being that of Trustees merely. In voting the shares held by them, the Trustees shall exercise their best judgment, from time to time, to the end that the affairs of the bank

shall be properly managed and the interests of the stockholders safeguarded, and in voting and acting on other matters whether at shareholders' meetings or otherwise, will likewise exercise their best judgment, but they assume no responsibility in respect of such management, or in respect of any action taken by them hereunder, or by directors elected by them, or taken in pursuance of their consent thereto; and no Trustee shall incur any responsibility or liability by reason of any error of law or of any matter or thing done or suffered or omitted to be done under this Agreement, except for his own wilful misfeasance.

12. The Trustees may adopt their own rules of procedure. Except as herein otherwise expressly provided, the action of a majority of the Trustees expressed at a meeting or by writing at or without a meeting, or by way of signature to any instrument, shall constitute the action of the Trustees and have the same effect as though taken by all. Any Trustee may vote in person or by proxy, may be a shareholder of the Bank or the holder of a Trust Certificate in his own right and may act as a director or officer of the Bank and receive compensation therefor, and he, or any firm of which he may be a member or corporation in which he may be a stockholder or of which he may be an officer or in which he may be otherwise interested, may contract with the Bank, or be or become pecuniarily interested in any manner or transaction to which the Bank may be a party or in which it may be in any way concerned, as fully as though he were not a Trustee.

13. All notices to be given to Trust Certificate Holders

shall be given either by mail to the registered holders at the addresses appearing on the books kept by the Trustees or their Agent, or by publication in one daily newspaper of general circulation in the City and State of New York, once in each week for two successive calendar weeks; and any call or notice whatsoever, when either mailed or published by the Trustees as herein provided, shall be taken and considered as though personally served on all Certificate Holders.

14. This agreement shall terminate ten years from the date first mentioned herein, to-wit, on the 31st day of December, 1934. The Trustees may, by unanimous consent and by notice to the Trust Certificate Holders, terminate this Agreement at any time before that date. Upon the termination of this Agreement, the Agent of the Trustees is expressly authorized to endorse the stock certificates held by the Trustees hereunder in the name of the Trustees for or in connection with distribution thereof to the holders of Trust Certificates; but the Trustees shall not be required to deliver stock certificates except in exchange for Trust Certificates representing the same number of shares, nor stock certificates for fractional shares.

Whenever, pursuant to the provisions of this Agreement, certificates of stock of the Bank shall become deliverable or at any time thereafter, the Trustees may deposit with any incorporated bank or trust company in good standing, having an office in the Borough of Manhattan, City and State of New York, certificates, duly endorsed in blank or accompanied by proper instruments of assign-

ment and transfer in blank, duly executed, for stock of the Bank to an amount equal to the amount of stock called for by the outstanding Trust Certificates, with authority to such depositary to make delivery thereof in exchange for Trust Certificates, and thereupon all further obligation or duty of the Trustees under this Agreement shall terminate.

15. The Agent of the Trustees may at any time resign from its duties hereunder by mailing, at least thirty days before the same is to take effect, its resignation in writing addressed to the Trustees in care of the Cashier of the Bank, at its principal office in the Borough of Manhattan, City and State of New York, and thereupon the Trustees shall forthwith appoint a successor to such Agent and notify the Agent so resigning of such appointment.

16. The Trustees may, in their sole discretion, notify the Certificate Holders in regard to any proposed exercise by the Trustees of any of the rights, powers or privileges vested in them, and may act in accordance with any request of a majority in amount of the Certificate Holders by voting or consenting, as so requested, with respect to all shares held by them as Trustees, but the Trustees shall not be bound to follow any such request, or to notify Certificate Holders of any proposed exercise of any such rights, powers or privileges, or to submit any matters to the Certificate Holders.

For the purpose of this Agreement, any request or consent in writing of the Certificate Holders may be in any number of concurrent instruments of similar tenor and may be executed by any Certificate Holder in person or

by his agent or attorney, appointed by an instrument in writing. Proof of the execution of such consent or of a writing appointing any such agent or attorneys shall be sufficient for any purpose of this Agreement, and shall be conclusive in favor of the Trustees, with regard to any action taken by them pursuant thereto, if the date and fact of the execution by any person of any such consent be proved by the certificate of any person purporting to act as a notary public, or other officer authorized to take acknowledgments of deeds to be recorded in any State, certifying that the person signing such consent acknowledged to him the execution thereof.

17. The term "Bank," for all purposes of this Agreement, including the issue and delivery of stock certificates, shall be taken to mean The Bank of America, a corporation organized and existing under the banking laws of the State of New York, or any successor corporation or corporations with or into which the same may be consolidated or merged.

18. In case any Trust Certificate issued under this Agreement shall become mutilated or destroyed or stolen or lost, the Trustees, in their discretion, may authorize the issue of a new Trust Certificate, and thereupon the Agent of the Trustees shall issue a new Trust Certificate in exchange therefor for a like number of shares and bearing a like serial number. The applicant for such substituted Trust Certificate shall furnish to the Trustees and to their Agent evidence to their satisfaction, respectively, of the mutilation, destruction, theft or loss of such Trust Certificate, together with such indemnity

to both the Trustee and/or their Agent, respectively, as, in their discretion, they may require.

19. This Agreement shall bind and benefit the executors, administrators, assigns and successors of the respective parties hereto and may be simultaneously executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original and such counterparts together shall constitute one instrument. An original of this Agreement shall be lodged with The Bank of New York and Trust Company, as Agent of the Trustees, and a duplicate thereof shall be filed in the principal office of the Bank, and shall be open to the inspection of any stockholder daily during business hours.

20. This Agreement shall become effective when signed by the Trustees.

In Witness Whereof, the Trustees have hereunto set their hands and seals and shareholders of the Bank have become parties to this Agreement either by subscribing these presents or otherwise as herein provided,—all as of the day first above written.

Edward C. Delafield, (Seal)
Edwin Thorne, (Seal)
F. E. Hasler, (Seal)
Voting Trustees.

CENTRAL HUDSON GAS AND ELECTRIC CORPORATION

AGREEMENT, dated January 1, 1927, by and between such of the owners of common stock of Central Hudson Gas & Electric Corporation, a New York corporation, hereinafter called the Company, as may become parties to this agreement in the manner hereinafter provided, hereinafter called the Stockholders, parties of the first part, and Thaddeus R. Beal, John L. Wilkie, Ernest R. Acker and John Wilkie, as Trustees, hereinafter called the Voting Trustees, parties of the second part, and American Exchange Irving Trust Company, a New York corporation, hereinafter called the Depositary, party of the third part.

Whereas the Company is a corporation organized and existing under the laws of the State of New York, with an authorized common stock divided into shares without nominal or par value, of which there are issued and outstanding upwards of 300,000 shares, and

Whereas in order to insure the continuity of management and policy of the Company the Stockholders of the Company becoming parties hereto desire to deposit their stock with the Voting Trustees hereunder,

NOW, THEREFORE, in consideration of the premises it is agreed as follows:

FIRST: Any holder of common stock of the Company may at any time become a party to this agreement by transferring to the Voting Trustees the common stock of the Company held by such stockholder and delivering to

the Depositary as agent of the Trustees the certificates for said stock, duly endorsed in blank or accompanied by proper instruments of assignment and transfer thereof in blank duly executed and in every case properly stamped for transfer, if so required by the Voting Trustees, and by his acceptance in respect thereof of a certificate or certificates issued under this agreement. Every such stockholder shall thereby become a party to and be bound by the provisions of this agreement with the same force and effect as if he had subscribed the same. All such stock of the Company so transferred to the Voting Trustees may be from time to time registered in their names as such Voting Trustees or in the name of "Voting Trustees of Stock of Central Hudson Gas & Electric Corporation under Agreement dated January 1, 1927."

SECOND: The Voting Trustees agree with the Stockholders and with each and every holder of certificates issued hereunder as hereinafter provided, that from time to time upon request they will cause to be issued to the Stockholders or upon their order in respect of all stock so transferred to the Voting Trustees certificates in substantially the following form, hereinafter called the "Voting Trust Certificates":

(Form of Voting Trust Certificates)

No..... .....Shares

CENTRAL HUDSON GAS & ELECTRIC CORPORATION

Voting Trust Certificate

This is to certify that, as hereinafter provided, on January 1, 1932, or upon the earlier or later termination

of the agreement hereinafter mentioned, as provided in said agreement, on surrender of this certificate and upon payment, if the Voting Trustees shall so require, of the amount of any stamp tax or other charge in connection with such delivery

will be entitled to receive a certificate or certificates, for shares of

common stock of Central Hudson Gas & Electric Corporation (hereinafter called the Company) without nominal or par value (or if such shares shall be changed to shares with a par value then to a proportionate number of such shares with a par value) and in the meantime to receive payments equal to the cash dividends, if any, collected by the Voting Trustees under the agreement hereinafter mentioned, and in the case of dividends paid other than in cash to receive delivery in kind of a proportion of such dividends collected by the Voting Trustees, in respect of such like number of shares, provided that such dividends if received by the Voting Trustees in common stock of the Company shall be payable in trust certificates. Until said delivery of such stock certificates the Voting Trustees shall possess, and be entitled in their discretion to exercise, all the rights and powers of every kind and character of absolute owners of said stock including, but without limitation, the right to receive dividends on such stock, to vote such stock, consent in writing or otherwise act with respect to any corporate or stockholders' action, to increase or reduce the capital stock of the Company, to classify or reclassify any of the stock as now or here-

after authorized into preferred and/or common stock or other classes of stock with or without par value, to amend the certificate of incorporation or by-laws, to merge or consolidate the Company with other corporations, to sell all or any part of its assets, to create any mortgage or lien on its property or for any other corporate act or purpose; it being expressly stipulated that no voting right shall pass by or under this certificate or by or under any agreement, express or implied.

This certificate is issued pursuant to, and the rights of the holders hereof are subject to all the terms and conditions of, a certain agreement dated January 1, 1927, between the owners of common stock of said Company and Thaddeus R. Beal, John L. Wilkie, Ernest R. Acker and John Wilkie, as Trustees, and American Exchange Irving Trust Company, as Depositary.

Unless sooner terminated as provided in said agreement, no stock certificate shall be due or deliverable under said Voting Trust Agreement before January 1, 1932; except that if so authorized by the vote or consent in writing of holders of voting trust certificates representing a majority in amount of the outstanding common stock of the Company, the Voting Trustees may in their discretion from time to time postpone said date to a later date, in any event not later than January 1, 1937, as provided in said agreement.

This certificate is transferable at the office or agency of the Depositary for the time being under said agreement by the registered holder hereof, either in person or

by attorney duly authorized, and on surrender hereof, according to such rules as the Voting Trustees may establish, and until so transferred the Voting Trustees and the Depositary may treat the registered holder as owner hereof for all purposes whatsoever.

This certificate is not valid unless duly signed on behalf of the undersigned Voting Trustees by the Depositary.

In witness whereof, the Voting Trustees have caused this certificate to be signed in their names by the Depositary, their duly authorized agent for that purpose.

Dated .....

Thaddeus R. Beal
John L. Wilkie
Ernest R. Acker
John Wilkie
Voting Trustees,
by their agent,
American Exchange Irving Trust Company,
Depositary,
By .....
Assistant Secretary.

Office, No. 60 Broadway, New York City

THIRD: The Voting Trust Certificates shall be transferable at the office or agency of the Depositary by the registered holder thereof either in person or by attorney duly authorized and upon surrender thereof, according to such rules as the Voting Trustees may from time to time establish, and until so transferred the Voting Trustees and the Depositary may treat the registered holder as

owner thereof for all purposes whatsoever. Stock certificates shall not be deliverable hereunder without the surrender of Voting Trust Certificates representing an equivalent number of shares. The transfer books of the Voting Trustees may, in their discretion, be closed and transfers of Trust Certificates thereon may be suspended from time to time for such reasonable period as the Voting Trustees may determine.

FOURTH: On January 1, 1932, or whenever earlier the Voting Trustees shall unanimously determine to authorize such delivery, the Voting Trustees, in exchange for and upon surrender of any Voting Trust Certificates then outstanding, will, in accordance with the terms hereof and on payment, if the Voting Trustees shall so require, of a sum sufficient to reimburse them for any stamp tax or other charge in connection with such delivery, deliver at the office of the Depositary certificates of stock of the Company to the amount called for by the respective Voting Trust Certificates so surrendered and may require the holders of Voting Trust Certificates to make such exchange; provided, however, that if so authorized by the vote or consent in writing of the holders of Voting Trust Certificates representing a majority in amount of the then outstanding common stock of the Company, the Voting Trustees may in their discretion from time to time postpone said date to a later date, in any event not later than January 1, 1937. Whenever certificates of stock of the Company shall become so deliverable, all further obligation of the Voting Trustees under this agreement, except to make such delivery, shall terminate.

FIFTH: Prior to such time for delivery of certificates for stock of the Company in exchange for Voting Trust Certificates the holder of each Voting Trust Certificate shall, in respect to the number of shares of stock called for by such certificate, be entitled to receive from time to time payments equal to the cash dividends, if any, collected by the Voting Trustees upon a like number of shares of stock of the Company standing in the name of the Voting Trustees; and in the case of dividends paid other than in cash such holder shall be entitled to receive from time to time delivery in kind of the proportion of such dividends collected by the Voting Trustees in respect of such like number of shares; provided, however, that if any such dividends shall be paid in fully paid common stock of the Company, the Voting Trustees shall hold, subject to the terms of this agreement, the certificates for such stock which shall be received by them on account of such dividend, and the holder of each Voting Trust Certificate shall be entitled to receive one or more additional Voting Trust Certificates issued under this agreement for stock to the amount received by the Voting Trustees in payment of the dividend upon the number of shares of stock called for by such Voting Trust Certificates.

SIXTH: In case the Company shall offer any of its stock or other securities to its stockholders for subscription, then in such case upon receiving from the holder of any Voting Trust Certificate, prior to the time limited by the Company for subscription and payment, a request to subscribe in his behalf, and the money required to pay for a stated amount of such stock or other securities (not

in excess of the ratable amount subscribable in respect of the stock represented by such Voting Trust Certificate), the Voting Trustees will make such subscription and payment, and, upon receiving from the Company the certificates of stock or other securities so subscribed for, will, if common stock, issue one or more Voting Trust Certificates in respect thereof to the holder of the Voting Trust Certificate who shall have made such request and payment, and, if other stock or securities, will deliver such other securities to the holders of Voting Trust Certificates who shall have made such request and payment. The Voting Trustees shall not, in any event, in respect of any dividend in stock or stock subscribed for, be required to deliver certificates representing fractional parts of a share, but may in lieu thereof deliver, in respect of fractional interests, fractional scrip certificates in such form and upon such terms and conditions as the Voting Trustees may in their discretion determine.

SEVENTH: The Voting Trustees may appoint one or more additional voting trustees by a written instrument signed by them and deposited with the Depositary. Any Voting Trustee may at any time resign by delivering to the Depositary his resignation in writing, to take effect ten days thereafter, or upon its acceptance by the Voting Trustees. In every case of death, resignation or inability of any Voting Trustee to act, the vacancy may be filled by the appointment of a successor to be made by a majority of the remaining Voting Trustees by a written instrument signed by them and deposited with the Depositary. The term "Voting Trustees" as used herein and in the Voting

Trust Certificates shall apply to the parties of the second part and any additional voting trustees appointed as aforesaid, and to their successors hereunder. Notwithstanding any vacancy among the Voting Trustees, the remaining Voting Trustees during the continuance of such vacancy shall be entitled to exercise all of the rights and perform all of the functions of the Voting Trustees. Notwithstanding any change in the Voting Trustees, the Voting Trustees for the time being may adopt and issue Voting Trust Certificates in the names of previous Voting Trustees.

EIGHTH: The Depositary may at any time resign its duties, trust and powers hereunder by giving ten days' notice thereof to the Voting Trustees, and the Depositary may at any time be removed by written instrument signed by all of the then Voting Trustees and delivered to the Depositary. In case of a vacancy in the position of Depositary, a majority of the Voting Trustees then in office may designate as successor some other bank or trust company by an instrument in writing signed by them and delivered to such successor Depositary, which successor shall thereupon be entitled to all the rights, authorities and powers hereby conferred on the above named Depositary. The Depositary so resigning or so removed shall thereupon transfer and deliver to such successor the stock certificates then held by it hereunder, together with all books and records relating to such stock certificates or to the Voting Trust Certificates. The term "Depositary" as used in this agreement and in the Voting Trust Certifi-

cates shall apply to the party of the third part and its successors at any time hereunder.

NINTH: The action of a majority of the Voting Trustees expressed from time to time at a meeting, or, by writing without a meeting, shall, except as otherwise herein stated, constitute the action of the Voting Trustees and shall have the same effect as if assented to by all. At any meeting of the Voting Trustees any Voting Trustee may vote in person or by proxy to any other Voting Trustee; and any Voting Trustee may give a power of attorney to any other Voting Trustee to sign for him in case of action of the Voting Trustees taken in writing without a meeting. The Voting Trustees may adopt their own rules of procedure. Any Voting Trustee may act as a director or officer of the Company, and he or any firm of which he may be a member, or any corporation of which he may be a stockholder, director or officer, may purchase, sell, own, hold or deal in Trust Certificates, and may contract with the Company, or be pecuniarily interested in any transaction to which the Company may be a party, or in which it may in any way be interested, as fully as though he were not a Voting Trustee.

TENTH: The Voting Trustees shall possess and be entitled, subject to the provisions hereof, in their discretion, to exercise all rights and powers of absolute owners of said stock, including, but without limitation, the right to receive dividends on said stock and the right to vote, consent in writing or otherwise act with respect to any corporate or stockholders' action, to increase or reduce

the capital stock of the Company, to classify or reclassify any of the stock as now or hereafter authorized into preferred and/or common stock or other classes of stock with or without par value, to amend the Certificate of Incorporation or by-laws, to merge or consolidate the Company with other corporations, to sell all or any part of its assets, to create any mortgage or lien on any property of the Company, or for any other corporate act or purpose; it being expressly stipulated that no voting right shall pass to others by or under the Voting Trust Certificates or by or under this agreement, or by or under any agreement express or implied.

In case the Voting Trustees shall vote or otherwise act in respect of the stock hereunder so as to effect a consolidation or merger of the Company with or into another corporation, or of another corporation with or into the Company, the Voting Trustees may in connection with such consolidation or merger surrender the stock hereunder and receive in lieu thereof and exchange therefor the stock issuable therefor in such merger or consolidation and may hold the stock so received in place of the stock deposited hereunder, and thereafter the rights and obligations of the Voting Trustees and of the holders of Voting Trust Certificates, with respect to stock hereunder shall for all purposes be treated as applying to the stock so received, there being substituted for each share of stock of the Company an amount of the new stock proportionate to the entire amount of such new stock received for all of the stock of the Company so surrendered; and upon

demand of the Voting Trustees to the holders of Voting Trust Certificates, such holders shall surrender their Voting Trust Certificates to the Depositary, as agent for the Voting Trustees, and shall accept in lieu thereof one or more new Voting Trust Certificates in form similar to that hereinbefore set forth, but modified so as to describe expressly the interest then represented by the Voting Trust Certificate. Any stamp taxes or other charges payable in respect of any such exchange shall, if so required by the Voting Trustees, be paid by the holders of the Voting Trust Certificates.

The Voting Trustees are also authorized to become parties to or prosecute or defend or intervene in any suits or legal proceedings, and the stockholders and holders from time to time of the Voting Trust Certificates agree to hold the Voting Trustees harmless from any action or omission by them in the premises.

ELEVENTH: In Voting, or otherwise acting hereunder, with respect to the stock of the Company held by them, the Voting Trustees will exercise their best judgment; but they assume no responsibility in respect to any action taken by them or their agents, and no Voting Trustee shall incur any responsibility by reason of any error of law or of any thing done or suffered or omitted, except for his own individual misconduct.

TWELFTH: The Voting Trustees are not to receive any compensation for their services hereunder. The Voting Trustees may employ counsel, and such other assistance as may be convenient in the performance of their

functions. The Voting Trustees may receive from the Company reimbursement or indemnity for and against any and all claims, expenses and liabilities by them incurred, or asserted against them, in connection with or growing out of this agreement or the discharge of their duties hereunder. Any such claims, expenses or liabilities not so paid may be charged to the holders of Trust Certificates pro rata, and may be deducted from dividends or other distributions to them, or may be made a charge payable as a condition to the delivery of stock in exchange for Voting Trust Certificates as provided herein, and the Voting Trustees shall be entitled to a lien therefor upon the stock, funds or other property in their possession or that of the Depositary hereunder.

THIRTEENTH: Any notice to holders of Voting Trust Certificates shall be sufficiently given by mailing to the registered holders thereof at the addresses furnished by them to the Depositary; and any call or notice whatsoever when so mailed shall be effective as though personally served on all the holders of the Voting Trust Certificates.

FOURTEENTH: The Depositary from time to time acting hereunder is hereby appointed the agent and Depositary of the Voting Trustees, to receive and hold as their custodian certificates for stock of the Company at any time delivered to the Voting Trustees hereunder, and to execute and issue Voting Trust Certificates in the name of the Voting Trustees, and to transfer the same, and to effect the exchange of stock certificates for Voting Trust

Certificates as and when herein provided, and the Voting Trustees may appoint such Depositary, with its consent, as their proxy or agent to perform any other of their functions hereunder.

FIFTEENTH: The Depositary assumes no responsibility for the acts of the Voting Trustees. The Depositary shall not be required to defend any suit, take any action or incur any expense or liability hereunder unless requested in writing by the holders of a majority in amount of the Voting Trust Certificates or a majority of the Voting Trustees and indemnified to its satisfaction. The Depositary shall be fully protected in all cases in acting upon the written directions or with the written approval of a majority of the Voting Trustees, except as otherwise herein expressly provided, and shall in no case be liable for any act or omission except only for its own wilful misconduct.

SIXTEENTH: The term "Company" as used herein, shall be taken to mean the above named Central Hudson Gas & Electric Corporation, or any corporation or corporations successor to it.

SEVENTEENTH: This agreement may be executed in several counterparts, each of which shall be an original, and such counterparts shall together constitute but one and the same instrument. One of such counterparts shall be kept at the office of the Depositary and one at the office of the Secretary of the Company, each of which shall be available to inspection by any holder of a Voting Trust Certificate.

In witness whereof, the stockholders, parties of the first part, have or shall from time to time become parties hereto by assigning and delivering their stock certificates to the Voting Trustees as herein provided or by receiving Voting Trust Certificates issued hereunder; the Voting Trustees have hereunto set their hands and seals and the Depositary has caused this instrument to be signed on its behalf by its officers thereunto duly authorized, and its corporate seal to be hereunto affixed and duly attested.

Thaddeus R. Beal (l. s.)
John L. Wilkie (l. s.)
Ernest R. Acker (l. s.)
John Wilkie (l. s.)

American Exchange Irving Trust Company,
By Arthur N. Hazeltine,
Assistant Vice-President.

(corporate seal)
Attest:
H. Major,
Assistant Secretary.

[Notarial acknowledgments attached.]

GOLD DUST CORPORATION

THIS AGREEMENT made this 28th day of January, 1924, between all the owners and holders of Voting Trust Certificates issued and outstanding under a certain voting trust agreement of September 21, 1923, parties of the first part, all owners and holders of shares of the Common Stock without nominal or par value of Gold Dust Corporation, a consolidated corporation organized and existing under the Laws of the State of New Jersey (hereinafter called the "Company"), who may become parties hereto, each for himself and not for the others, parties of the second part (said parties of the first and second parts being hereinafter sometimes collectively called the "Stockholders"), and Francis D. Bartow, Ray Morris, George K. Morrow, and Royall Victor (hereinafter called the "Voting Trustees"), parties of the third part,

Whereas, by instrument dated September 21, 1923, the parties of the first and third parts entered into a voting trust agreement under which there was deposited all of the outstanding Common Stock without nominal or par value of Gold Dust Corporation, a corporation organized and existing under the Laws of the State of New Jersey, and

Whereas, said Gold Dust Corporation by consolidation agreement dated January 22nd, 1924, became the consolidated corporation (the Company) abovementioned, and

Whereas, the parties of the first part desire to sur-

render their voting trust certificates issued under said voting trust agreement of September 21, 1923, and to receive in exchange therefor Voting Trust Certificates with respect to their proportionate share of Common Stock without par value of the Company, and the parties of the second part desire to deposit their stock hereunder, and

Whereas, all of the stockholders for the reason aforesaid and for their mutual benefit and protection desire to execute this agreement upon the terms and conditions hereinafter stated,

Now, therefore, in consideration of the premises, of the recitals contained in said voting trust agreement of September 21, 1923, and of the covenants hereinafter contained, said voting trust agreement of September 21, 1923, is herewith amended to read, and it is agreed, as follows:

First: The parties of the first part promise and agree immediately upon the execution by them of this agreement to surrender to the Voting Trustees common stock trust certificates issued under the voting trust agreement of September 21, 1923, to the number of shares set opposite their respective names, and the parties of the second part agree immediately upon the execution by them of this agreement to assign, transfer and deliver to the Voting Trustees, certificates for shares of common stock of the Company to the number of shares set opposite their respective signatures. The Voting Trustees shall hold and shall dispose of, under and pursuant to the terms and conditions hereof, all certificates for the com-

mon stock of the Company which they now hold or which they may receive in exchange for stock held under the voting trust agreement of September 21, 1923, and which may now or hereafter from time to time be delivered hereunder by the above named or other common stockholders of the Company.

Second: The Voting Trustees in exchange for said common stock trust certificates issued under said voting trust agreement dated September 21, 1923, and in exchange for the shares of common stock of the Company transferred and delivered to them hereunder, will cause to be issued and delivered to the stockholders transferring the same Common Stock Trust Certificates in substantially the following form:

Gold Dust Corporation.

Common Stock Trust Certificate.

This is to certify that there have been deposited with the undersigned, as Voting Trustees under the Voting Trust Agreement hereafter mentioned,

fully paid and non-assessable shares, without nominal or par value, of the Common Stock of Gold Dust Corporation, and that is

entitled to all the benefits and interests specified in said Voting Trust Agreement arising from the deposit of said shares, all as provided in and subject to the terms of said Voting Trust Agreement, to which reference is hereby made. Until the termination of the said Voting Trust Agreement, the above named owner hereof or his assigns is entitled to receive payments equal to the amount of the cash dividends, if any, collected by the undersigned

Voting Trustees, or their successors in the trust, upon the above mentioned number of shares of Common Stock of the said Company or the proceeds thereof.

The said Voting Trust Agreement shall terminate on the 1st day of July, 1931, but the Voting Trustees in their absolute discretion may effect an earlier termination thereof.

Until after actual delivery by the Voting Trustees to the holders of Trust Certificates of the securities held by them under said Voting Trust Agreement or delivery thereof to a bank or trust company as specified therein, the Voting Trustees or their successors in the trust shall possess and shall be entitled to exercise all rights and powers of every nature of absolute owners of said securities, including the right to vote thereon and to execute consents with respect thereto for every purpose; it being expressly stipulated that no voting right passes to the above named owner hereof or his assigns by or under this certificate or by or under any agreement, express or implied.

This certificate is issued under and pursuant to, and the rights of the holder hereof are subject to and are limited by the terms and conditions of a certain Voting Trust Agreement, dated the 28th day of January, 1924, and filed with the said Company, to the terms of which the holder hereof assents, and is transferable on the books of the undersigned Voting Trustees, by the registered owner hereof, in person or by attorney duly authorized, according to the rules established for the purpose by the undersigned Voting Trustees, upon surrender of this cer-

tificate, properly endorsed; and until so transferred, the Voting Trustees may treat the registered holder as owner hereof for all purposes whatsoever, but they shall not be required to deliver any securities hereunder without the surrender hereof. In connection with, and as a condition of, making or permitting any transfer or delivery of securities or Trust Certificates, the Voting Trustees under said Agreement may require the payment of a sum sufficient to pay or reimburse them for any stamp tax or other governmental charge in connection therewith.

This certificate shall not be valid unless registered and countersigned by the Registrar.

In Witness Whereof, the undersigned Voting Trustees, personally or by their duly appointed agent, have executed this Certificate this

FRANCIS D. BARTOW
RAY MORRIS
GEORGE K. MORROW
ROYALL VICTOR
Voting Trustees,
By.....Agent.[1]

Registered and Countersigned

.....

Registrar.

The Voting Trustees may from time to time make changes in the form of Common Stock Trust Certificates, provided that such changes shall not be inconsistent with this Agreement. They may issue scrip certificates repre-

[1] Under this agreement the New York Trust Company was appointed Depositary and Transfer Agent.

senting fractions of a share of stock of the Company, which certificates shall be in such form and shall carry such rights and privileges as the Voting Trustees may determine. The Voting Trustees may limit the time within such scrip certificates may be exchanged for Common Stock Trust Certificates and in the event that any such scrip certificates shall not be presented for exchange within the time limit so fixed, the Voting Trustees may surrender to the Company the shares of stock or other property held with respect to such scrip certificate.

Third: The Voting Trustees may cause to be issued hereunder temporary printed or typewritten Common Stock Trust Certificates conforming generally to the form hereinbefore set forth and may cause the same to be exchanged for definitive Trust Certificates in substantially said form, when the same are prepared. The Voting Trustees may, at any time, appoint a registrar for said Common Stock Trust Certificates and may provide that said Certificates shall not be valid unless registered and countersigned by such registrar.

The Voting Trustees may execute any or all of said Common Stock Trust Certificates by their agent or agents whom they may, from time to time, appoint for the purpose and whom they may remove and change in their discretion; or they may be executed by any one or more of the Voting Trustees on behalf of all of said Voting Trustees. The Voting Trustees may appoint such agent or agents as they may see fit, including agents to have the custody of the certificates of stock now or hereafter delivered to them hereunder.

Any agent or registrar appointed by the Voting Trustees may resign upon thirty (30) days' written notice to the Voting Trustees, or on such shorter notice as the Voting Trustees may accept as sufficient.

No agent or registrar appointed by the Voting Trustees shall be liable or responsible for any action taken or suffered by it or them in good faith or for anything other than its or their own individual wilful default, and no such agent or registrar shall incur any liability by reason of anything done or permitted to be done at the request or by the permission of the Voting Trustees, and any such agent or registrar shall be fully protected and relieved in all cases in acting upon the written direction or with the written approval of two or more of the Voting Trustees.

Fourth: The Trust Certificates issued by the Voting Trustees hereunder, may be transferred on the books of the Voting Trustees upon the surrender of such certificates properly endorsed by the registered owner thereof, in person or by attorney duly authorized according to the rules established for that purpose by the Voting Trustees, and until so transferred the Voting Trustees may treat the registered holders as owners thereof for all purposes whatsoever, but the Voting Trustees shall not be required to deliver securities hereunder without the surrender of Trust Certificates calling therefor. Every transferee of a certificate or certificates issued hereunder shall by the acceptance of such certificate or certificates become a party hereto with like effect as though an original party hereto, and shall be embraced within the meaning of the term "Stockholders" whenever used herein. In connec-

tion with, and as a condition of, making or permitting any transfer or delivery of securities or Trust Certificates under any provision of this Agreement, the Voting Trustees may require the payment of a sum sufficient to pay or reimburse them for any stamp tax or other governmental charge in connection therewith. The transfer books for Trust Certificates may be closed by the Voting Trustees, at any time prior to the payment or distribution of dividends, or for any other purpose.

Fifth: The Voting Trustees shall forthwith cause all shares of stock of the Company deposited with them hereunder to be transferred on the books of the Company into the name of the Voting Trustees as such Voting Trustees under this Agreement; except that the Voting Trustees are authorized to transfer one share of Common Stock to each of such persons as may be elected or selected to serve the Company as a director or in any other capacity, or to allow one share of Common Stock to remain in the name of each such person, in order to qualify such person to act as a director of the Company, or to serve the Company in any other capacity; but all such certificates of stock shall be endorsed in blank by such persons and shall be deposited with the Voting Trustees and held by them for the purposes of this Agreement.

Sixth: Until the actual delivery by the Voting Trustees to the holders of Trust Certificates of securities in exchange for Common Stock Trust Certificates or until the Voting Trustees shall have delivered the securities held by them to a bank or trust company, either in bearer

form or endorsed for transfer or in the names of holders of Trust Certificates, to be delivered in exchange for the outstanding Common Stock Certificates in the manner provided in Article Ninth hereof and said certificates have been accepted by said bank or trust company, the Voting Trustees shall have the full and unqualified right and power to vote and to execute consents with respect to all securities having voting power held by them, at all meetings of stockholders for any purpose, and shall possess in respect of any and all securities deposited hereunder, and shall be entitled in their discretion to exercise, all the powers of absolute owners of said securities and all rights of every name and nature in respect of such securities, including the right to vote and to execute consents for every purpose and to receive dividends thereon and also the right to exchange deposited securities in whole or in part for other securities, in which event the securities so obtained shall be held by the Voting Trustees in all respects in lieu of the Common Stock of the Company originally deposited hereunder and upon the termination of this Agreement shall be distributed pro rata to the registered owners of Common Stock Trust Certificates in accordance with their respective interests. The Voting Trustees may vote or consent, or issue proxies to vote or consent, at stockholders' meetings of the Company and otherwise, as they shall in their uncontrolled discretion determine, and no voting or other right or power with respect to the securities held in trust hereunder shall pass to the holders of Trust Certificates or to others by or

under the Trust Certificates, or by or under this Agreement, or by or under any other agreement, whether by implication or otherwise.

In voting or giving directions for voting the securities deposited hereunder, the Voting Trustees will exercise their best judgment, from time to time, to select suitable directors, to the end that the affairs of the Company, or any other company whose securities are held by them, shall be properly managed, and in voting or giving directions for voting and acting on other matters for stockholders' action, the Voting Trustees will exercise like judgment; but they assume no responsibility in respect of such management or in respect of any action taken by them, or taken in pursuance of any consent or vote which they may give, and no Voting Trustee shall incur any responsibility as stockholder, trustee, or otherwise, by reason of any matter or thing done or omitted under this Agreement, or otherwise, except for his own individual wilful misconduct.

The Voting Trustees and their successors as Trustees hereunder may receive indemnity from the Company or from others for and against any and all claims and any and all expenses and liabilities incurred by them in connection with or growing out of this Agreement or the *bona fide* discharge of their duties hereunder, and may receive such reasonable compensation for their services as may be agreed upon between them and the Company or any other company whose securities they may hold.

Until the actual delivery of securities to the holders of Trust Certificates in exchange for Common Stock Trust

Certificates, or until the Voting Trustees shall have delivered the securities held by them to a bank or trust company, either in bearer form or endorsed for transfer or in the names of the holders of Trust Certificates, to be delivered in exchange for the outstanding Common Stock Trust Certificates in the manner provided in Article Ninth hereof, and said certificates have been accepted by said bank or trust company, the holder of each Trust Certificate shall be entitled to receive, from time to time, payment of the cash dividends, if any, collected by the Voting Trustees upon the number of shares of Common Stock of the Company represented by such Trust Certificate, or the proceeds thereof. In the event that any dividend paid in Common Stock of the Company shall be received by the Voting Trustees, the respective holders of Trust Certificates issued hereunder shall be entitled to the delivery of Trust Certificates to the amount of the stock received by the Voting Trustees as such dividend upon the number of such shares of the Company represented by their respective Trust Certificates, and in the event that any dividend or other distribution other than cash or Common Stock of the Company shall be received by the Voting Trustees, the Voting Trustees may, in their discretion, distribute the same ratably among the holders of Trust Certificates in accordance with their respective shares or may issue such certificates or other evidences of interest therein as to them may seem advisable or may hold the same until the termination of this Agreement.

Seventh: In the event that the Voting Trustees shall desire to ascertain the views of the holders of record of

the Trust Certificates issued hereunder with respect to any action or thing done or proposed to be done by them or by the Company, or upon any other question, the Voting Trustees may for such purpose call a meeting of such certificate holders to be held at the principal office of the Company in the State of New Jersey or at any place in the City of New York that the Voting Trustees may select. Such call shall set forth the time, place and purpose of the meeting and notice thereof shall be mailed at least ten days before the date of such meeting to each holder of record of Trust Certificates outstanding hereunder who shall not waive such notice. At such meeting every holder of record of Trust Certificates outstanding hereunder shall have one vote for each share of Common Stock represented by Trust Certificates standing in his name and may vote in person or by proxy. If at any such meeting the holders of record of Trust Certificates representing two-thirds in amount of the securities held in trust hereunder shall affirmatively concur in any expression or view with regard to any matter or thing mentioned in the call of such meeting, such expression may conclusively and for all purposes be deemed by the Voting Trustees to be that of all holders of Trust Certificates outstanding hereunder. Each and every holder of record of Trust Certificates outstanding hereunder agrees for himself, his successors and assigns to accept and be bound by such determination of the holders of Trust Certificates representing two-thirds in amount of the securities held hereunder as herein provided. No action at any such meeting shall operate to modify the express provisions of

this Agreement or in any way limit the powers and discretion of the Voting Trustees as defined by this Agreement.

Eighth: The Voting Trustees may at any time in their discretion and to such extent as they may deem advisable deliver in exchange for Voting Trust Certificates certificates for Common Stock of the Company in amount equal to the shares represented by such Voting Trust Certificates in order to enable the surrender to the Company for cancellation of the stock so delivered, or otherwise as the Voting Trustees may in their absolute discretion deem advisable, and the delivery of any such stock of the Company to any one or more holders of Voting Trust Certificates shall not entitle such holder or holders or any other holder or holders of Voting Trust Certificates to demand delivery of all or any part of the stock of the Company remaining deposited hereunder.

Ninth: This Agreement, unless earlier terminated as hereinafter provided, shall continue in force until the 1st day of July, 1931; provided, however, that at any time the Voting Trustees at their option may terminate this Agreement and may call upon the holders of Trust Certificates outstanding hereunder to surrender them, and receive in exchange therefor the securities then held by the Voting Trustees in the amounts represented by their respective interests therein. On the 1st day of July, 1931, or upon the prior termination of this Agreement, as herein provided, the Voting Trustees in exchange for and upon surrender of the aforesaid Trust Certificates then outstanding, will in accordance with the terms hereof deliver

or cause to be delivered to the holders of outstanding Trust Certificates the securities then held by the Voting Trustees, to the amounts represented by the interests therein of the holders of said Trust Certificates and may require the respective holders thereof to exchange them for their respective shares of said securities.

Whenever pursuant to the foregoing provisions of this Article Ninth, securities held by the Voting Trustees shall become deliverable to the holders of Trust Certificates, the Voting Trustees may deliver the securities then held by them hereunder to any bank or trust company which they may select, either in bearer form or endorsed for transfer or in the names of the holders of Trust Certificates, with instructions to deliver them to or upon the order of the holders of Trust Certificates in accordance with their respective interests and thereupon all further obligation or duty of the Voting Trustees under this Agreement shall terminate.

Tenth: The action of any two or more of the Voting Trustees, expressed from time to time at a meeting or by writing without a meeting, shall, except as otherwise herein stated, constitute the action of the Voting Trustees and shall have the same effect as if assented to by all. Any Voting Trustee may vote or may act in person or by proxy. At any meeting of the Voting Trustees the presence of two or more Voting Trustees in person or by proxy shall constitute a quorum. The Voting Trustees may adopt their own rules of procedure. Any Voting Trustee may act as a director or officer of the Company or any controlled or subsidiary or affiliated company; and

he or any firm of which he may be a member, or any corporation of which he may be a stockholder, director or officer, may to the extent permitted by law contract with the Company or any controlled or subsidiary company, or be or become pecuniarily interested in any matter or transaction to which the Company, or any controlled or subsidiary or affiliated company may be a party or in which the Company or any controlled or subsidiary or affiliated company may in any way be concerned, as fully as though he were not a Voting Trustee. No Voting Trustee shall be required to give any bond or security for the discharge of his duties.

Any Voting Trustee may at any time resign by delivering to the other Trustees his resignation in writing to take effect ten (10) days thereafter, unless sooner accepted by the remaining Voting Trustees. In case of the death, resignation or inability to act of Francis D. Bartow, or a successor to him, a successor Voting Trustee shall be appointed by The First National Bank of the City of New York or its successor or successors; in case of the death, resignation or inability to act of Ray Morris, or a successor to him, a successor Voting Trustee shall be appointed by Messrs. Brown Brothers & Co. of New York City, as now or as hereafter constituted, or its successor or successors; and in case of the death, resignation or inability to act of Royall Victor, or a successor to him, a successor Voting Trustee shall be appointed by Messrs. Sullivan & Cromwell of New York City, as now or as hereafter constituted, or its successor or successors. Except as above specified, in every case of death, resignation or

inability of any Voting Trustee to act, or in case of a failure of any of the above mentioned corporations or firms to designate successor Voting Trustees, as above, the vacancy so occurring shall be filled by the appointment of a successor or successors, to be made by a majority of the other Voting Trustees, by written instrument filed with the Company. The term "Voting Trustees," as used herein and in said Trust Certificates, shall apply not only to the parties of the second part but also to their successors hereunder, and in the event of any such vacancy and the appointment of a successor to any Voting Trustee as herein provided, all the rights, powers and duties of such Trustee shall at once pass to and devolve upon his successor.

Notwithstanding any change in the Voting Trustees, the Voting Trustees for the time being may adopt and issue Trust Certificates in the names of the original Voting Trustees, the parties hereto of the third part.

Eleventh: The Voting Trustees herein appointed, and their successors, may be parties to this Agreement as Stockholders, and to the extent of the stock deposited by them they shall be entitled in all respects to the same rights and benefits as other Stockholders.

Twelfth: Any owner of fully paid Common Stock of the Company may at any time become a party hereto with the same force and effect as though he had subscribed his name hereto under seal and may acquire all of the rights and benefits hereof by depositing his stock with the Voting Trustees, duly endorsed in blank or accompanied by proper instruments of assignment and

transfer thereof in blank, duly executed, and upon the payment of all taxes or other charges in connection with the transfer thereof.

Thirteenth: The Voting Trustees hereby accept the above trust subject to all the terms, conditions and reservations herein contained, and agree that they will exercise the powers and perform the duties of Voting Trustees as herein set forth; provided, however, that nothing herein contained shall be construed to prevent any or all of the Voting Trustees from resigning and discharging themselves from the trust aforesaid.

Fourteenth: All notices to the holders of Trust Certificates shall be given by mail addressed to the registered holders of such Trust Certificates at the addresses furnished by such holders to the Voting Trustees; and any call or notice whatsoever when so mailed by the Voting Trustees shall be taken and considered as though personally served on all parties hereto, including the holders of said Trust Certificates, and upon all parties becoming bound hereby, and such mailing shall be the only notice required to be given under any provision of this Agreement.

Fifteenth: The term "Company" for the purposes of this Agreement and of all rights hereunder, including the issue and delivery of stock, shall be taken to mean Gold Dust Corporation, a consolidated corporation organized and existing under the laws of the State of New Jersey, or any corporation or corporations successor to it, and in the event of such succession, the shares of the successor corporation received by the Voting Trustees shall be held

by them in lieu of the shares of stock of said Gold Dust Corporation deposited hereunder and in all respects subject to the terms and conditions of this Agreement.

Sixteenth: A copy of this Agreement shall be filed in the office of the Company where its principal business is transacted, and shall be open to the inspection of any stockholder of the Company daily during business hours.

Seventeenth: If at any time the Voting Trustees are of the opinion that any tax or governmental charge is payable in respect of any securities held by them hereunder, or in respect of any dividends, distributions or other rights arising from or appurtenant to the subject matter of this Agreement, the Voting Trustees may, but shall not be required to, pay such tax or governmental charge. Any sum so paid with interest thereon at six per centum (6%) per annum, shall be a first charge against the securities held by the Voting Trustees hereunder and/or against any dividends, distributions or rights thereto appurtenant and may be satisfied therefrom.

If for any reason any provision hereof shall be inoperative, the validity and effect of the other provisions hereof shall not be affected thereby.

Eighteenth: Nothing in this Agreement contained shall be construed to deprive the Voting Trustees, or their nominee or nominees, of the right as record holder or holders of any of the securities at any time held hereunder to vote the same and to execute consents with respect thereto notwithstanding the termination of this Agreement so long as they shall be or shall continue to be record holders of such securities.

Nineteenth: This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

In Witness Whereof, the several original parties hereto have hereunto set their hands and seals as of the day and year first above written.

Signatures	No. of shares of Voting Trust Certificates under Agreement of Sept. 21, 1923.
The N. K. Fairbank Company	198,014
A. C. Lang, Vice-Pres. (Corporate Seal)	
T. A. Dooling	1,986
	Parties of the First Part.
	No. of shares of common stock of Gold Dust Corporation
L. Hartman	
C. K. Mason	
John M. Wilson	
	169,443
	Parties of the Second Part.
Francis D. Bartow	
Ray Morris	
George K. Morrow	
Royall Victor	
Voting Trustees	
	Parties of the Third Part.

SOUTHERN RAILWAY COMPANY

THIS AGREEMENT, made in the city of New York this fifteenth day of October, eighteen hundred and ninety-four, by and between C. H. Coster, George Sherman, and Anthony J. Thomas, a committee under a certain plan and agreement for the reorganization of the Richmond and West Point Terminal Railway and Warehouse Company and its "subordinate companies," made the first day of May, eighteen hundred and ninety-three, and subsequently from time to time modified (hereinafter called the Committee), parties of the first part, and J. Pierpont Morgan, Charles Lanier, and George F. Baker (hereinafter called the Voting Trustees), parties of the second part, witnesseth as follows:

Whereas the Committee has delivered to the Voting Trustees certificates for fully-paid shares of one hundred dollars ($100) each of the capital stock of the Southern Railway Company (a corporation of Virginia), as follows: 1,199,000 shares of the common stock, 500,000 shares of the preferred stock;

Which certificates, together with such other similar certificates as hereafter from time to time may be delivered hereunder, are to be held and disposed of by the Voting Trustees under and pursuant to the terms and conditions hereof;

NOW, THEREFORE:

FIRST. The Voting Trustees do hereby promise and agree with the Committee, and with each and every holder of certificates issued as hereinafter provided, that from time to time, upon request, they will cause to be

issued to the Committee, or upon its order, in respect of all stock received from it, and to the railway company, or upon its order, in respect of all stock received from it, certificates in substantially the following form:

SOUTHERN RAILWAY COMPANY.

Common stock trust certificate.

This is to certify that, as hereinafter provided, ...will be entitled to receive a certificate or certificates for .....fully-paid shares of one hundred dollars each in the common capital stock of the Southern Railway Company, and in the meantime to receive payments equal to the dividends, if any, collected by the undersigned Voting Trustees upon a like number of such shares standing in their names; and, until after the actual delivery of such certificates, the Voting Trustees shall possess, and shall be entitled to exercise, all rights of every name and nature, including the right to vote, in respect of any and all such stock; it being expressly stipulated that no voting right passes by or under this certificate, or by or under any agreement expressed or implied. No stock certificate shall be due or deliverable hereunder before the first day of July, 1899, nor until after the Southern Railway Company, in one year, shall have paid five per cent. cash dividends on its preferred stock; but the Voting Trustees, in their discretion, may make earlier delivery.

This certificate is issued under and pursuant to the terms and conditions of a certain agreement dated October 15, 1894, by and between C. H. Coster, George Sher-

man, and Anthony J. Thomas, as a Committee, and the undersigned Voting Trustees.

This certificate is transferable only on the books of the undersigned Voting Trustees by the registered holder either in person or by attorney duly authorized according to rules established for that purpose by the undersigned Voting Trustees and on surrender hereof; and until so transferred the undersigned Voting Trustees may treat the registered holder as owner hereof for all purposes whatsoever, except that delivery of stock certificates hereunder shall not be made without the surrender hereof.

This certificate is not valid unless duly signed by Drexel, Morgan & Co., as agents, and also registered by the Central Trust Company, of New York, as registrar.

In witness whereof, the undersigned Voting Trustees have caused this certificate to be signed by Drexel, Morgan & Co., their duly authorized agents, this ..... day of ....., 189..

J. Pierpont Morgan,
Charles Lanier,
George F. Baker,
Voting Trustees.

By their agents hereunder,

....

Registered this .....day of ....., 189..

Central Trust Company of New York, Registrar.

By ....

Entered:

....

Transfer Clerk.

SOUTHERN RAILWAY COMPANY.

Preferred stock trust certificate.

This is to certify that, as hereinafter provided, ...
.....will be entitled to receive a certificate or certificates for .....fully-paid shares of one hundred dollars each in the preferred capital stock of the Southern Railway Company, and in the meantime to receive payments equal to the dividends, if any, collected by the undersigned Voting Trustees upon a like number of such shares standing in their names; and, until after the actual delivery of such certificates the Voting Trustees shall possess and shall be entitled to exercise all rights of every name and nature, including the right to vote, in respect of any and all such stock, it being expressly stipulated that no voting right passes by or under this certificate, or by or under any agreement expressed or implied.

This certificate is issued under and pursuant to the terms and conditions of a certain agreement dated October 15, 1894, by and between C. H. Coster, George Sherman, and Anthony J. Thomas, as a committee, and the undersigned Voting Trustees. No stock certificate shall be due or deliverable hereunder before the first day of July, 1899, nor until after the Southern Railway Company, in one year, shall have paid five per cent. cash dividends on its preferred stock; but the Voting Trustees, in their discretion, may make earlier delivery.

This certificate is transferable only on the books of the undersigned Voting Trustees by the registered holder,

either in person or by attorney duly authorized, according to rules established for that purpose by the undersigned Voting Trustees, and on surrender hereof, and until so transferred, the undersigned Voting Trustees may treat the registered holder as owner hereof for all purposes whatsoever, except that delivery of stock certificates hereunder shall not be made without the surrender hereof.

This certificate is not valid unless duly signed by Drexel, Morgan & Co., as agents, and also registered by the Central Trust Company of New York as registrar.

In witness whereof the undersigned Voting Trustees have caused this certificate to be signed by Drexel, Morgan & Co., their duly authorized agents, this.....day of ....., 189..

J. Pierpont Morgan,
Charles Lanier,
George F. Baker,
Voting Trustees.

By their agents hereunder,
Registered this .....day of ....., 189..
Central Trust Company of New York, Registrar.
By .....

Entered:
...., Transfer Clerk.

Second. On the first day of July, 1899, if the Southern Railway Company shall then have paid five per cent. cash dividend, in one year, on its preferred stock, and, if not, then so soon as such dividend shall be so paid, or

whenever the Voting Trustees shall decide to make delivery prior to such date, without waiting for such payment of dividend, the Voting Trustees in exchange for and upon surrender of stock trust certificates then outstanding, will, in accordance with the terms hereof, deliver proper certificates of stock of the Southern Railway Company, it being distinctly understood and agreed that at any date the Voting Trustees may call upon the holders of stock trust certificates to exchange them for certificates of capital stock, and at any time after such call may deliver stock certificates in exchange therefor; and also that the preferred stock is subject to the exercise at any time by the Southern Railway Company of any charter right to redeem such stock in cash at par.

THIRD. From time to time hereafter the Committee, or the Southern Railway Company, may tender and deliver, and the Voting Trustees will receive, additional fully-paid shares of the capital stock of the Southern Railway Company, either common or preferred, and in respect of all such shares so received will issue and deliver certificates similar to those above mentioned, entitling the holders to all rights above specified.

FOURTH. Any Voting Trustee may at any time resign by delivering to the other Voting Trustees, in writing, his resignation, to take effect ten days thereafter; and in every case of death, or resignation, or of the inability of any Voting Trustee to act, the vacancy so occurring shall be filled by the appointment of a successor or successors to be made by the other Voting Trustees by a written

instrument; and the term "Voting Trustees" as herein used shall apply to the parties of the second part and their successors hereunder.

FIFTH. All questions arising between the Voting Trustees shall from time to time be determined by a majority, either at a meeting or by writing with or without a meeting, and in like manner they may establish their rules of action.

SIXTH. In voting the stock held by them the Voting Trustees will exercise their best judgment from time to time to select suitable directors, to the end that the affairs of the company shall be properly managed, and in voting on other matters which may come before them at any stockholders' meeting will exercise like judgment; but they assume no responsibility in respect to such management or in respect of any action taken pursuant to their votes so cast, it being understood that no Voting Trustee incurs any responsibility by reason of any matter or thing done or omitted under this agreement, except for his own gross negligence or wilful malfeasance.

SEVENTH. This agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

Any Voting Trustee hereunder may vote in person or by proxy to any other Voting Trustee or to any person not a voting trustee.

IN WITNESS WHEREOF, the several parties hereunto

have set their hands and seals in the city of New York the day and year first above mentioned.

C. H. Coster, (seal)
G. Sherman, (seal)
Anthony J. Thomas, (seal)
Committee.

J. Pierpont Morgan, (seal)
Charles Lanier, (seal)
Geo. F. Baker, (seal)
Voting Trustees.

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